Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

October Term, 1998

John Madison Stembridge – *Petitioner*
Pro Se

Vs.

Preferred Risk Mutual Insurance Co.
of Iowa, Inc – *Respondent*

On Petition for a Writ of Certiorari
to the Florida Court of Appeals for the Third District

PETITION FOR WRIT OF CERTIORARI

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52 pp

QUESTIONS PRESENTED

1. When lower courts have abused their authority by denying one of its citizens due process, equal protection of his property, life, liberty, pursuit of happiness and jury trial for twenty-one years, doesn't the Constitution itself demand that this Court restore those rights and award sufficient damages to the victim of this abuse in order to bring healing and closure?

2. When lower Courts' orders have been obtained through "Fraud Upon the Court", isn't this Court empowered by Fed. R. Civ. P. 60 (b), 9, U.S.C. § 10; Fla. R. Civ. P. 1, 540 (6); and Fla. 1.190 (e) to "set aside" these orders and find in favor of the wronged party? In this instance, the Petitioner?

3. Is there a lack of <u>independent</u> accountability for any illegal, dishonest arguments, opinions, orders, or other actions committed by Judges and lawyers (officers of the Court) during the course of litigation?

4. Are our Bar Associations and Judicial Qualifications Commissions inadequate, as in the present case, to protect our citizens from biased, prejudicial and dishonest officers of the Court, whether Judges or lawyers?

PARTIES

The Pro Se Petitioner, John Madison Stembridge was the Plaintiff in the trial court and was the appellant in the Florida Court of Appeals, Third District. The Respondent Preferred Risk Mutural Insurance Co. of Iowa, Inc. was the Defendant in the trial court and was the appellee in the Florida Court of appeals, Third District. In this Petition, the parties will be referred to as they appear before this court and, alternatively, as "Stembridge" and as "Preferred Risk."

The reference Appendix will refer to the rule-required appendix accompanying this petition. Much of the Appendix is provided in Volume II. All emphasis has been supplied by the Pro Se Petitioner unless indicated to the contrary.

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PETITION FOR WRIT OF CERTIORARI

John Madison Stembridge respectfully prays that a Writ of Certiorari to review the Opinion of the Florida Court of Appeals, Third District entered in this proceeding on April 8, 1998 and affirmed by the Supreme Court of Florida November 3, 1998 in order to set aside these orders which were obtained by FRAUD UPON THE COURT.

OPINIONS BELOW

The Opinion herein sought to be reviewed was rendered by the Florida Court of Appeals, Third District and is located at ***Appendix p. 1a .***

The Order of the Supreme Court of Florida that affirms the Opinion of the Florida Court of Appeals Third District is located at ***Appendix p. 2a .***

JURISDICTION

On November 3, 1998 the Florida Supreme Court affirmed the April 8, 1998 Opinion of the Florida Third District Court of Appeals which stated that the Petitioner's August 2, 1996 Motion to Vacate was filed two days out of time.

The jurisdiction of the Court to review the judgment of the Florida Supreme Court and opinion of the Florida Third District Court of Appeals is pursuant to 28 U.S.C. § 12541 (1)

STATEMENT OF CASE

This is a very simple case that involves collusion and conspiracy on the part of the respondent to defraud the petitioner of his constitutional rights to his property, his good name, his life, his livelihood, and his pursuit of happiness including further political office for 21 years. thirty judges on the Circuit, Appellate, and of Florida Supreme Court levels have sat on various proceedings of this litigation.

Two Parties

This case is like the famous book, "The Tale of Two Cities" by Charles Dickens. However, this story is about two parties who came together in

good faith for the purpose of protecting specific property in Hollywood, Florida, owned by the Petitioner.

Two Names

The Respondent's name is Preferred Risk Mutual Insurance Company of Iowa, Inc. Its very name tells one that it is an insurance company that insures property that is a preferred risk.

Black's Law Dictionary defines:

Preferred - "Possessing or accorded priority, advantage or privilege."

Risk - The Casualty Contemplated in a Contract of insurance.

This means that the Respondent by Florida Statute contemplated any potential casualty that may happen to the Petitioner's property. Upon that contemplation, the Respondent determined the amount of coverage it would issue and the amount of premiums it would require for that coverage.

Then based upon these factors, (1) the amount of premiums; (2) for the amount of coverage, that the Respondent issued; the Petitioner's property was certified a PREFERRED RISK by the Respondent and its agents.

The Petitioner's name is John Madison Stembridge, given to him by his parents. He was named John after a grandfather and Madison after the fourth President and Father of our Constitution, and author of the Bill of Rights, James Madison. ***Appendix pp. 148a -149a***

Like his namesake James Madison who worked for unity among the thirteen colonies, the Petitioner has worked diligently for healing and reconciliation in the Middle East and around the world. From these efforts, like his name sake, he has developed a Global Bill of Rights which seeks to "unite the Middle East and world" with justice, peace, educational and economic opportunity for every person. **Appendix p. 42a**

Two Remorses

Both parties first reaction was remorse.

(1) The Respondent: seller's remorse. (2) The Petitioner: buyer's remorse

The Respondent: How could its agents issue a policy on that property? (In spite of its remorse, the Respondent had no problem taking the highly escalated premiums $1611.00 for such a small policy that was not enough to insure one building much less seven.)

The Petitioner: Buyer's remorse: how he could be fraudulently induced by the Respondent to pay the Respondent $1,611.00 for protection when the Respondent knew that should a major catastrophe occur, it would deny coverage and steal the $1,611.00, plus the coverage that it bought and

then would engage in unfair trade practices and then misuse the legal judicial system to obstruct justice for the Petitioner for twenty-one years? ***Appendix p. 128a - 132a***

Then for a company with the name Preferred Risk being "penny wise and pound foolish" by not honoring and paying its insured, the Petitioner, such a small claim; it opened a much wider door to other causes of action: fraud and bad faith (which the law considers synonymous), conversion, insurance code violations, character defamation, obstruction of justice, intentional infliction of mental and emotional cruelty and punitive damages.

Two Reactions

Respondent's Reaction: Denial of its Federal and State Tort and statutory responsibilities to its insured. Denial of the coverage purchased by the Petitioner; fired its salesman and closed the agency that issued the policy. The Respondent rather than paying the claim timely, fairly and in good faith decided to falsely accuse the Petitioner of having anti-Semites torch and vandalize his property, all in an effort to divert attention from its own fraudulent actions and for the errors and omission of its agents. It converted the $1,611.00 paid to it by the Petitioner and the $30,000.00 policy that it bought to its own use, now compounded for 21 years.

Then it fraudulently misused the legal and judicial system to obstruct justice by misleading argument and Fraud upon the Court. **Appendix p. 128a - 132a**

The court should carefully note that the Respondent in collusion with the Petitioner's attorney Sam Holland, made sure that the Respondent's salesman Roger Crist, Preferred Risk agency owner Virgil Poole, and adjuster Paul Westberry were not on the stand for cross examination in the Breach of Contract trial, because its bad faith and unfair trade practices would have been exposed to the Jury. Judges Mario Goderich and Michael Salman would have been publicly embarrassed for their illegally striking the Petitioner's Counts II, - V in Second and Third Amended Complaint. **Appendix pp. 133a, 134a**

The Petitioner's Reaction: Acceptance of his obligations, proceeded in good faith to perform all his obligations to the best of his ability from his greatly diminished financial means. When the Respondent fraudulently refused every help to the Petitioner, rather than totally giving up or declaring bankruptcy, the Petitioner, without any help from the Respondent, honorably and to the best of his ability, continued to:

1. Pay to have all seven buildings boarded up.
2. Pay to have all seven buildings demolished and the debris hauled away.
3. Pay five mortgages on the property.

4. When Home Federal and Portner and Portner started foreclosure actions on their first, second and fourth mortgages because of late payments, the Petitioner had to borrow money to pay them off early. The Petitioner still owes this money.

5. Pay taxes to the city of Hollywood, Broward County, and to the Broward County School District for twenty-one years on a vacant lot because of his financial inability to build on it.

6. Pay in twenty-one years hundreds of thousands of dollars in interest on loans, late fees, bank charges trying to pay toward his debt.

7. Pay huge legal fees, trial costs, court reporters, office supplies, etc.

The Petitioner's debts keep rising rapidly on the negative side compounding annually like most people's assets compound on the positive side.

The Acquisition of Policy

After leaving office as mayor of North Miami in May of 1975, the petitioner acquired income property located in Hollywood, Florida in December 1975. This property consisted of seven buildings with nine units: two - two bedroom houses. Two - two bedroom duplexes and three one bedroom cottages.

Early 1976, the Petitioner was having lunch on Saturday with two long time friends, Frank Esty and Cliff Frame at Esty's home. Frank was a neighbor to then Miami Dolphins Coach , Don Shula, and to U.S. Senator Bob Graham in Miami Lakes. Joining us was Roger Crist, a friend of theirs.

During lunch, the Petitioner mentioned to Frank and Cliff, who were life insurance agents, that he had just acquired nine units in seven buildings in Hollywood, Fl. and needed insurance on this property.

Roger, whom the Petitioner met for the first time that day, said, "I can help you. My company, Preferred Risk writes Casualty Insurance on property." He then enumerated all the excellent qualities of his insurance company. **Appendix pp. 128a - 132a** In good faith, based on his verbal advertisement of his company's high credential's and because Roger was a long time friend of Frank's and Cliff's, the Petitioner said, "Well, since you're a good friend of Frank and Cliff, I might as well give it to you as to anyone else." Upon which the Petitioner gave him the address, told him to go by, inspect the property and then to prepare the policy. This was the one and only time that the Petitioner sought insurance on this property.

When Roger came by the Petitioner's store with the policy, it was only for $30,000.00. The annual premium was $537.00 or $1,611 for the three year policy. **Appendix 82a**

The Petitioner complained as to how such a small policy could protect seven buildings, also that $537.00 annually or $1,611.00 for three years was a lot for such a small amount of coverage. At the time, one could get twice the coverage, $60,000.00 plus for $200 or less. Roger explained that that was the most coverage his company would offer because of the age and condition of the buildings. Roger never mentioned that he had written this policy on only one building. Also the $30,000.00 was enough to cover the first mortgagee with Home Federal in Hollywood, he said. About the other four mortgages, he said, you're only required to cover the first. The Respondent must have decided the small coverage would be justified better on one building, rather than seven. Either way, it is malfeasance and fraud

The Petitioner complained that $30,000 may not repair or rebuild one building, much less seven, should a calamity happen. He said, "I'm sorry, John, that is the most my company will go". Florida Insurance Statutes **Appendix 128a - 132a** require the insurance company to fairly appraise a property and then fairly set the amount of coverage and the premiums. This is mandatory, not just implied. Certainly good faith, also, was lacking by the Respondent for failing to appraise the Petitioner's property for the proper amount that would be needed to repair or replace seven buildings should a calamity happen. This is certainly a violation, not only of good faith, but also a violation of Fla Insurance Statutes **Appendix Id**

The Respondent's fraudulent deceitful, dishonest dealings started with (1) the false inducement of its agent representing the Respondent as an honorable, fair company; (2) the Respondent purposefully and deceitfully wrote, without the Petitioner's knowledge, the small policy on only one building rather than seven. (3) After the Petitioner's loss, the Respondent sent the Petitioner an automobile claim form rather than the proper casualty form; (4) Even the law firms that it hires are being paid to commit fraud upon the court. A continued course of deceit and dishonest dealings from beginning to the present which is a violation of every Florida Insurance Statute. **Appendix Id**

The arson took place on or about June 7, 1977 while the Petitioner was doing a one hour television special on "The John Stembridge Inspirational Hour".

The Petitioner knew nothing of the arson until the next morning when the Hollywood Fire Chief called to inform him of the fires in the two duplexes the night before. The chief explained that it appeared to be arson.

Some time later the Petitioner was attending a luncheon in North Dade where he met one of the detectives with the Hollywood Police Dept. When the Detective heard the Petitioner's name, he asked, "Aren't you the

gentleman that owned the apartments on Pierce St. in Hollywood that were torched and vandalized?"

The Petitioner answered, "Yes." The detective then related how his department had arrested the real perpetrators and had deported one of them to an island in the Caribbean.

To this day, neither the Respondent nor any of its Board Members, executive officers, agents, adjusters, members of its law firms has complied with the Fla. Statute 124-155 by writing the Petitioner a good faith letter apologizing for its adjuster Paul Westberry's lack of concern for the plight of the Petitioner even falsely accusing the Petitioner of having his own buildings torched. Also for lack of lack of good faith in evaluating the true amount of insurance that the Petitioner would need should a calamity befall his property , and for its lack of good faith in expeditiously paying the claim so that at least some of the Petitioner's buildings and some of the income they were generating could be saved rather than losing everything for twenty-one years. Ins. inducement to buy. **Appendix p 128a-132a**

Unfortunately for the Petitioner, the Respondent, for twenty one years, has had no "good hands, good will, or good faith reaching out promptly or timely to its insured, the Petitioner, to make him whole. The April 8, 1998 opinion Fla. 3d DCA said the Petitioner's motion to vacate was two days out of time. In the eyes of this Court how can two days compare with the Respondent being 21 years out of time?

The only side of the hands the Petitioner has ever seen from the Respondent or any of its agents or lawyers was the "back side" due to the many verbal and written false accusations made with malicious, malice and fraud with the intent to intimidate, harass, or obstruct justice so that the Petitioner would be economically unable to carry unto completion his many causes of action against the Respondent for its tortuous and Statutory crimes. Through lies and Fraud upon the Court, the Petitioner has been denied res Judicata. (His case being heard on its merits by Jury trial) or by having Sua Sponte Judgments entered against the Respondent for sham pleadings , generalized computer answers and defenses that are not based on truth or the law in this case, and for fraud upon the Court for 21 years. Both the judicial and legal system have known the truth in this case, but have allowed this tortious agony to unmercifully go unchecked until this present Court.

Anti-Semitic Acts

In June 1977, the two duplexes were torched and all the other buildings were maliciously vandalized through the hate crimes of anti-Semites, according to Hollywood police records.

The tenants in units 1 and 2 were drinking, barbecuing and playing loud music outdoors at 5:00 A.M. on a Sunday morning. The police were called. The tenants erroneously thought that it was Bill Schieb, the neighbor who lived across the street, that called.

In their hatred, they painted a huge Swastika on the front of Mr. Schieb's home, left tire tracks in his lawn, and finally, drove their car through his hedge, severely damaging it.

When Mr. Schieb reported these hate crimes to the Petitioner, and the Petitioner personally saw what had been done to Mr. Schieb's home and property, the Petitioner immediately filed eviction notices on these tenants. As a Zionist, the Petitioner still believes to this day that who ever blesses Israel is blessed and who ever curses Israel is cursed. (Genesis 12:3).

Upon receiving these eviction notices the tenants turned their anti-Semitic hate crimes on the petitioner, setting fire to the two duplexes and vandalizing each of the other five buildings, leaving graffiti and other hate expressions on the walls against the Petitioner as well.

Why the Petitioner has suffered Anti-Semitic Acts:

The Petitioner has been a committed Zionist most of his life, having made his first trip to Russia and Israel in 1963 (35 years ago), plus sixteen subsequent trips to Israel. He has worked tirelessly for the freedom of the three million Jews in Russia to make Aliyah and for Justice with peace in the Middle East and around the world.. Appendix Zionist Activities **Appendix 140a-144a, 106a**

Income Producing Property

At the time, and previously, all the units were rented and were bringing in enough income to pay the five mortgages, insurance, taxes and maintenance. The Respondent was notified by phone by the Petitioner. He was told to get estimates but was never sent an official claim form until nearly two years later. Bonnie Belgau, the first lady contractor licensed by the city of Hollywood, prepared a very conservative estimate of |$57,000 to repair. The Petitioner submitted it timely in August 1977 to the Respondent, but was denied the $30,000.00 payment that he in good faith expected from the Respondent with every expectation that the Respondent would be there immediately should a calamity ever happen.

Family Impacted

The Petitioner's then living mother and three of his seven brothers helped him with loans. Two of the three brothers own the 8,200 square foot

building where the Petitioner runs his fledging remaining furniture store. Had they been like the Respondent and just totally disregarded the terrible plight of their brother, they could have rented that store in the heart of North Miami on North Miami Blvd. for $10.00 a foot or probably higher as an office building. That would have brought them conservatively $82,000 per year or $820,000 in ten years from a more financially secure business. So because of their love for their brother and letting him slide on his rent, they have lost a million to two million dollars in rent alone.

The difference between these two stories is simple. The Respondent had a legal implied duty to deal fairly and in good faith with its insured or be liable in Tort or Statute for punitive damages. ***Appendix pp. 128a - 132a*** Ins. The brothers' performance was out of love and honor for their brother, not because they were legally obligated to do so.

Friend Reacts

In June of 1992, Mr. Gordon Di Battisto learned that Judges Mario Goderich and Michael Salman had stricken the heart of the Petitioner's claim against the Respondent and then how Judge Jon Gordon had further poured salt in his wounds, signed a Judgment for $10,000 against the Petitioner for libel, Mr. Di Battisto was furious. ***Appendix - p. 148a - 149a***

He sat down at his typewriter and personally typed the June 11, 1992 complaint. Because of his Italian accent and lack of English Grammar, he made numerous misspellings, etc. The Petitioner tried to correct them but Mr. Di Battisto would not allow any of changes. He said "You've had all these so-called College educated lawyers writing perfect English while working behind your back in collusion with the Respondent and judges against you. They're not going to get away with that."

The Petitioner then questioned him about putting in the complaint damages for 10 million dollars. He said "What are you talking about, John? You were mayor of the fourth largest city in Dade County. You ran for Congress and you have lobbied heads of State, including the Pope, etc. for the release of the three million Jewish people in Russia all at your own financial sacrifice. It is not right that these corrupt people have defrauded you of your property and your day in Court."

Quest for Understanding and Truth

In his quest for truth and to understand how the Judicial Branch of our government has consistently denied the Petitioner's Constitutional rights, the Petitioner has talked to literally hundreds of lawyers and insurance executives from California to New England, to Florida and points in between.

A criminal attorney for the Defense Department in Washington, D.C. told the Petitioner that law has become a business in America today:

it's not about fairness or justice. So often its about how much money can be made by the judge and the law firm that he sides with.

The Dean of an Eastern Law School had this to say after reviewing the Petitioner's case. In his opinion, the Petitioner did have causes of action for Fraud, Bad Faith, Conversion, Insurance Code Violations, intentional infliction of emotional cruelty all of which give rise to punitive damages. Had he been a judge in the case, he would have allowed these counts to go to trial.

At the end of his conference with the Petitioner, he said, "John, you're in the wrong state and in the wrong city. The whole world knows of the rampant corruption in South Florida. In my opinion, you should have your day in Court but based on what you've shown me, about the way your case has been handled so far, I have little hope that you will."

His prediction has come true on every level until NOW.

Because he was young, mortgaged out, and unable to borrow $57,000 from Home Federal to repair his buildings, the city made him pay to board up all the buildings at his own expense. Also because he was unable to obtain a loan, the city made him demolish and remove the buildings. All of this without any kindness much less help from the Respondent. The only thing the Petitioner got from the Respondent's adjuster was, "If you don't like the way I'm handling this, sue me." But the Petitioner did not want to go to Court, even begged him, "If you won't give me the policy amount, just give me Twenty-five thousand dollars now so that I can save at least some of my property and I don't lose everything." ***Appendix pp 128a-132a*** He laughingly refused. Even with that verbal slap in the face, the Petitioner did not sue the Respondent until 1980, two and a half years later. Hardly, the actions of a scheming, fraudulent Petitioner as falsely portrayed by Mintz and Truppman, the Respondent's attorneys, in the Respondent's answers and defenses to the Petitioner's second and third Amended Complaints. Case 80-7272 CA 20 ***Appendix pp. 79a-80a, 97a - 99a, 100a***

Impact of Respondent's Fraud

At the time of this loss the Petitioner had three furniture stores, was hosting a weekly television program for two and half years, directing the Greater Miami and Broward Inspirational Concert Series for seven and a half years. One store was closed the same year of the loss, a second store was closed in 1979, two years later. The Concert Series and weekly television show were canceled in 1980, two and a half years later because of his financial inability to continue financing them.

The Petitioner is still paying exorbitant legal bills and expenses seeking justice these twenty-one years. Today at 61, the Petitioner is constantly fighting bankruptcy when most people his age look forward to a happy retirement. The Petitioner is in debt well over one half a million dollars, debt that he did not have at the time of his loss. Every year that debt compounds drastically. Today, the Petitioner has only one remaining struggling store from which to pay his operating expenses, plus pay toward all his debts. In fact, if the Petitioner only had to pay his current operating expenses his store would be profitable. Not so however, as he struggles to pay toward his debts. If it were not for his brothers letting him use this 8,200 Sq. Ft. store on North Miami Boulevard without paying rent all these years, his store would have collapsed from the weight of debt. (The Petitioner is hopeful that he can repay his brothers at some time for their love and support all these years.)

Introduction

It is to you that the founding Fathers charged to be keepers of this document that forever guarantees these basic rights and freedoms to each citizen of America (and hopefully soon to every person in the world) that this Petitioner submits his Writ.

> "In every stage of these oppressions we have Petitioned for Redress in the Most humble Terms: our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people."

(Direct quote from the United States Constitution) Could not "Prince", in the present instance, be the insurance industry in collusion with the Judicial and legal system, as such a tyrant against the Petitioner? Every judge and lawyer takes an oath to uphold the rights of the oppressed. ***Appendix 133a-135a, 123a132a*** Every insurance company is licensed to operate under a Public Trust Mandate by dealing honestly, fairly and in good faith for its insured or be liable by Tort or Statute for punitive damages.

The oppression mentioned here by the framers of the Constitution is the same oppression inflicted on the Petitioner by the insurance industry, the legal and judicial system all working in collusion and conspiracy by denying the Petitioner of his property, his good name, his livelihood, his liberty and his pursuit of happiness. How many judges, lawyers or insurance executives could be happy if some of them suddenly and shockingly had to to endure what the Petitioner has had to endure these many years?

Justice Perverted and
Allowed Unchecked Twenty-One Years

"***There is nothing more powerful than Truth***," Daniel Webster.

Perverse is defined in Webster's New World Dictionary this way:

1. deviating from what is considered right or good; wrong, improper, etc. or corrupt, wicked, etc., perverted
2. persisting in error or fault; stubbornly contrary
3. obstinately disobedient or difficult; intractable.
4. Characterized by or resulting from obstinacy or contrariness.

All of these definitions aptly define the Respondent, its Board members, Executive Officers, agents, adjusters, and its counselors (law firms). The Respondent has had two law firms defending it's tortful and Statutory actions against the Petitioner during this litigation: the first law firm included attorneys Orta, Ress, Mintz, Gomez, Howland, Truppman, Klein. The other is Roland Gomez, who left the first firm to form his own firm with Richard Gomez. Appendix pp. 134a -135a, 128a - 132a

These two firms, by their own actions have gone even above and beyond the tortful, statutory actions of the Respondent, and are doubly liable and responsible for the perverted justice continuing for 21 years in this case. This Writ will prove that the Petitioner had these specific causes of action for fraud, bad faith, conversion, insurance code violations, character defamation and punitive damages at the time of his loss, and that the laws of the State of Florida at the time of loss permitted such causes of action, contrary to the computer generated answers by the Respondent's law firms regardless of their bearings upon its insured. Contrary to these two truths, these two law firms, for the Respondent, have lied to the court (1) by denying that Florida at the time of loss was a jurisdiction that mandated an insurance company to deal fairly and in good faith with its insured or be liable in tort for punitive damage (2) by denying that the Petitioner had none of the causes of action, listed above, in his 2nd and 3rd Amended Complaints in Case # 80-7272 CA 20 or in his Feb. 16, 1993 and June 30, 1993 complaints in case # 92-13319 CA20 against the Respondent. ***Appendix pp 10a-17a, 37a-46a, 18a-36a, 60a-78a***

These causes of action being Fraud, Conversion, Bad Faith, Defamation of Character, Insurance Code Violations, Rico, Mental and Emo-

tional Distress, and Punitive Damages. Thereby defrauding the Petitioner of his life, liberty, property, and pursuit of happiness.

By Fraud upon the Court and upon the Petitioner, these two firms have willfully lied overtly and wantonly to the Justices in the Eleventh Judicial Circuit, Dade County, Fl., the Third and Fourth District Court of Appeals in Florida and to the Supreme Court of Florida, by stating that there wa no law in the Ftate of Florida for the Petitioner's causes of action listed in the previous paragraph. ***Appendix pp 126a, 127a, 136a***

These two firms have used computer generated answers without truth or the facts regardless of their bearings upon the Petitioner. Contrary to these two truths, these two law firms, for the Respondent, have lied to the court (1) by denying that Florida at the time of loss was a jurisdiction that mandated an insurance company to deal fairly and in good faith with its insured or be liable in tort for punitive damage (2) by denying that the Petitioner had none of the causes of action, listed above, in his 2nd and 3rd Amended Complaints in Case # 80-7272 CA or in his Feb. 16, 1993 and June 30, 1993 complaints against the Respondent that were alleged in his second and third complaints in Case #80-7272 CA20 and Case # 92-13319 CA 20. ***Appendix pp. 10a-17a, 37a-46a, 18a-36a, 60a-78a, 100a, 139a***

These causes of action being Fraud, Conversion, Bad Faith, Defamation of Character, Insurance Code Violations, Rico, Mental and Emotional Distress, and Punitive Damages. Thereby defrauding the Petitioner of his life, liberty, property, and pursuit of happiness. ***Appendix pp.128a-132***

By Fraud upon the Court and upon the Petitioner, these two firms have willfully lied overtly and wantonly to the Justices in the Eleventh Judicial Circuit, Dade County, Fl., the Third and Fourth District Court of Appeals in Florida and to the Supreme Court of Florida. Hopefully, this Court will swiftly and forcefully ESTOP these law firms who represent the Respondent from continuing their Fraud from rearing its head in these hallowed chambers of the United States Supreme Court. Enough is enough. ***Appendix pp. 134a - 135a***

QUESTIONS RESPONDENT MUST ANSWER BEFORE THIS COURT

When the Respondent's answers to the Petitioner's Writ is filed, this Court must scrutinize closely the Respondent's specific answers to the following questions by the Petitioner:

A. When did the Respondent's law firms know the following:

1. That Florida Law allows a first party Cause of Action against an insurance company for unfair dealing and for bad faith?

See Escambia Treating Co. v Aetna Casualty & Surety Co. 421 F. Supp. 1367 (N.D. Fla. 1976) (This ruling was one year before the Petitioner's loss.) ***Appendix pp. 83a. 84a***

2. That Florida law allowed a cause of action for insulting and abusive language resulting in mental distress and punitive damages are awarded. See: Singleton v. Foreman 43 SF 2d 962 (5th Cir 1970). (This ruling predated the Petitioner's loss by seven years.) ***Appendix p. 87a***

3. That Florida law allowed a Cause of Action for some intentional wrong, or insult, abuse or gross negligence which amounts to an independent tort? See: Griffith v. Shamrock Village 94 So. 854 (Fla. 1957)***Appendix p. 88a***

4. That Florida law allowed a cause of action for Malfeasance of an implied duty or failure to use reasonable care, gives rise to Tort liability whether the foundation for the undertaking was gratuitous or contractual. See Banfield v. Addington 104 Fla. 661, 140 So. 893 (1973). Also see Flint and Walling Mfg. Co. v. Becket, 167 Ind. 491 -, 79 N.E. 503, 506 (1906). ***Appendix p. Id.***

5. That Florida law allowed a cause of action for Punitive damages fraudulent inducement and deceit. See Ashland Oil, Inc. v. Pickard 269 So. 2d 714 (Fla 3d DCA 1972)***Appendix pp. 88a-89a***

6. That Florida law allows a cause of action for the violation of a duty, express or implied. See Woodbury v. Tampa Waterworks Co. 57 Fla. 243, 49 So. 566 (1909). ***Appendix p. 89a***

7. That Florida law allowed a Cause of Action for fraud, malice, gross negligence or oppression. See Moore v. Southern Bell Tel & Tel 176 So. 2d 558 (Fla 2d DCA 1965). ***Appendix 84a***

8. That Florida law allowed a cause of action for an ententional wrong? Associated Heavy Equipment Schools, Inc. v. Masiello 219 So. 2d 465 (Fla 3d DCA 1969) ***Appendix p. 84a***

9. That Florida law allowed a cause of action for punitive damages a continued course of dishonest dealing? See Campbell v. Government Employees Ins. Co. So. 2d 232 (Fla. 2d DCA (Fla. 1974) This case was three years before the petitioners loss. ***Appendix p. 86a.***

QUESTIONS FOR THIS COURT TO ANSWER
for the American People

1. Is there a lack of <u>independent</u> accountability for any orders, judgments, opinions that were obtained or rendered by incompetent, illegal, dishonest

officers of the Court during the course of litigation whether those officers are Judges or lawyers?

2. Are our Bar associations and State Judicial Qualifications Commissions inadequate to protect our citizens from incompetent, biased, prejudicial and dishonest officers of the Court?.

The Petitioner consulted personally with former Dade County State Attorney, Janet Reno, Jay Peterson, legal counsel to former Governor Lawton Chiles, Florida Attorney General Robert Butterworth, former Florida Insurance Commissioners and Treasurers Bill Gunter and Tom Gallagher, Paul Williams of the Insurance Fraud Division, members of the United States Senate and House of Representatives' Judiciary Committees about the Respondent's fraud upon the Court as well as upon the Petitioner. Janet Reno, while Dade State Attorney told the Petitioner that to recover his financial losses one has to sue civilly. There would be no financial recovery through criminal prosecution. But then she failed to address how a single Petitioner can overcome the bias of judges that refuse to follow the law or to expose Fraud upon the Court by the continual misleading arguments of the Respondent's law firms. Most of the elected or other appointed officials responded that because of separation of powers they were barred from doing anything about it. The exceptions to them were Senator Connie Mack and Congresswoman Iliana Ross Lehtinen.

Both wrote Janet Reno at the Justice Department asking it to investigate the Judges actions in the Petitioner's case.

If the elected officials are barred, the Bar Association and the Judicial Qualifications Commission are incapable or unwilling, then who is responsible and accountable for bringing these fraudulent actions by officers of the Court to light? As the law is now civilly practiced, only the Petitioner of a cause of action in the Courts has that responsibility. However, most Petitioners do not have the financial means and staying power to hire attorneys to pursue the illegal, dishonest arguments, opinions or orders perpetrated on the Courts by officers of the Court. Also, many times the Petitioners do not have the education to pursue it as Pro Se litigants. Because of these and other reasons, such "fraud upon the court" goes unchecked and innocent people, families, businesses, industries, governments, educational, religious and cultural institutions are defrauded of billions of dollars and are denied their Constitutional rights to life, liberty, property and the pursuit of happiness.

Help Sought from FBI

Finally, out of utter frustration and exasperation, the Petitioner went to the Legal Division of the FBI for help. At this time the Petitioner

did not know whether the FBI was already conducting its sting investigation of the Judges in Dade County, called "Operation Courtbroom" or perhaps it was initiated when both Senator Connie Mack and Congresswoman Iliana Ross Lehtinen wrote Janet Reno and the Justice Department requesting it to investigate the actions of the Judges in the Petitioner's case. So far, however, the results of "Operation Courtbroom" only apprehended numerous judges for bribery, cocaine use and other overt crimes, none yet for the white collar crimes mentioned above by the Petitioner. The joke around South Florida after the publicity of the FBI's "Operation Courtbroom", was, "If the FBI arrested every crooked judge in South Florida, all of our courts would be closed." This is a terrible indictment of the way so many sincerely feel about the Judicial System in South Florida. Miami is the contraband, stolen car and drug capital of the world. Most of the billions of dollars of drugs, stolen property were either coming in or going out in the sealed containers at the Port of Miami. The local television stations did a big expose on the former Dade County State Attorney before Janet Reno and many of the circuit judges at that time who were allegedly showed on camera, weekly dropping by the mayor of the Farmer's Market to pick up their weekly contributions.

After hearing the Petitioner's concerns about the Respondent's lawyers lying to the Courts about the law and facts of this case, Mr. William Dolde of the FBI suggested that the Petitioner file an inquiry with the Florida Bar about these fraudulent actions of the lawyers for the Respondent. The Petitioner followed his instruction. ***Appendix pp. 90a-96a, 52a***

Florida Bar Association

First concerning the formal Inquiry to the Florida Bar regarding the Respondent's lawyer Mark Mintz's fraudulent and misleading arguments to the court. ***Appendix pp. 90a-96a, 52a*** Only one person, Warren Stam, for the Florida Bar investigated the Petitioner's formal inquiry and reported that he did not see any problems, much less any lying or fraud upon the Court by Mintz while representing the Respondent This was a totally erroneous finding by just one person representing the Florida Bar. By this finding, the Florida Bar now joined the Courts by allowing these infractions to continue another eight years unchecked. At the time of the inquiry, the Bar dismissed 97% of the complaints against lawyers. Most of the 3% censured or disbarred were single practitioners and not members of large law firms whose clients are wealthy enough to pay the large fees of these law firms or to contribute to the campaigns of Judges and other political officers, i.e., Governors, etc.

Vengefully, after the decision of the Bar, Mark Mintz, Counselor for the Respondent, sued the Petitioner for libel. The Petitioner answered

his complaint by pleading truth as his defense. Even so Judge Jon Gordon unjustly signed a judgment for libel against the Petitioner for not timely responding to Mintz's requests for admissions even though the Petitioner answered Mark Mintz's complaint and his interrogatories, using truth as his defense against libel. ***Appendix pp. 133a-134a*** Truppman representing Mintz, placed an order of libel in front of Judge Jon Gordon who dutifully signed it without allowing further hearings or a jury trial, even though "trial courts are required to look beyond the pleadings to determine the propriety of entering summary judgment". Stembridge v. Mintz opinion Fla. 3d DCA 557 So. 2d at 639. ***Appendix pp. 119a-123a*** It's amazing no matter which Judge a matter came before, any thing the Respondent's lawyers asked them to do, the Judges did. However, not one of the Judges in the Petitioner's case ever required the Respondent to fully answer in detail each complaint of the Petitioner in cases # 80-7272 CA 20 and 92-13319 CA 20, as did Judge Gordon for Mintz. ***Appendix pp. 10a-17a, 37a-46a, 18a-36a, 60a-78a, 100a, 139a,*** **28b - 42b**

After Judge Gordon's order was signed against the Petitioner, the Petitioner hired the Ellis Rubin & Mark Rubin Law Firm, to appeal Judge Jon Gordon's order to the Florida Third District Court of Appeal. The Fla. 3d DCA reversed Judge Gordon's libel order against the Petitioner by finding in the Petitioner's favor. But even after being reversed by the Fla 3d DCA, Judge Jon Gordon refused to unilaterally reverse it in the Eleventh Circuit on his own. His actions required the Petitioner having to make numerous motions and attend hearings before Judge Gordon would reverse his order to the Petitioner's favor. The Rubin law firm said that the Judge should have done it unilaterally. John M. Stembridge Vs Mark Mintz 3rd DCA. - Fl. p 6 ***Appendix pp. 119a-123a***

Here the appeal Court found: "In this case, Stembridge's Bar Inquiry set forth background facts about the insurance action his counsel had filed several tort counts against his insurance company. "Stembridge then summarized certain arguments made by Mintz at a hearing in 1985 in support of the insurance company's successful motion to dismiss the tort counts." Mintz nowhere disputes that he made the arguments attributed to him."

"Stembridge went on in the Bar Inquiry for five typewritten pages to summarize and quote from, various judicial decisions having to do with the duty of an insurance company to its insured. Based on those reported decisions on Florida law at the hearings, he inquired in substance whether the described "circumstances give rise to any problems as they relate to the rules regulating the Florida Bar, its code, or canons of Professional Ethics."

Further, the Fla 3rd DCA 1995 stated in John M. Stembridge Vs Mark Mintz, ***Appendix Id.***

"Procedurally, we believe that the rule in Sher V. Liberty Mutual Insurance Co., 557 So. 2d 638 (Fla. 3d DCA 1990) indicates that an entry of summary judgment based solely on Stembridge's failure to respond to requests for admissions was inappropriate as set forth in Sher, "trial courts are required to look beyond the pleadings to determine the propriety of entering summary judgment. Here, the record is replete with evidence contradicting the admissions created by (defendant's) failure to file a timely response." 557 So. 2d at 639 (citation omitted).

Given Stembridge's sworn answers to interrogatories and sworn answer to the complaint, there remained disputed issues of material fact which precluded entry of Summary judgment.

Footnote 4 states:

> "It appears that the failure to file a response to the request for admissions was a result of misunderstanding by the Pro Se litigant. The trial court entered an order requiring Stembridge to file an answer to the complaint and request for admissions within ten days. Within five days, Stembridge filed a sworn answer and sworn answers to interrogatories. Stembridge recited that his filing was made in response to the court's order."

Here the Florida Third District Court of Appeals in Stembridge v. Mintz, is in conflict with itself in Stembridge v. Preferred Risk. In Stembridge v. Mintz the 3rd DCA stated: "Trial Courts are required to look beyond the pleadings and determine the propriety of entering Summary judgment. Here the record is replete with evidence contradicting the admissions created by (Defendant's) failure to file a timely response." 557 So. 2d at 639

This is exactly what Judge Postman did Sept. '1995 when he looked beyond the Jan. 6, 1995 dismissal of the Respondent from the Petitioner's compliant by acknowledging that the case was at issue and set a jury trial for March 19, 1996. ***Appendix Clerk's Index***

The Court should carefully note that Mark Mintz did not deny misrepresenting the law to the Eleventh Circuit on the Petitioner's Third Amended Complaint. As alleged in the Petitioner's formal inquiry to the Bar. Appendix? Rule 1. 110 states failure to deny is to admit. Mark Mintz, by law, was required to deny the charges or by not denying to that he used misleading arguments Dec. 3, 1985 before Judge Mario Goderich as alleged in the formal Bar Inquiry, he admitted the charges according to Rule 1.110 Fl. R. Civ. P. This means that Mintz admitted to "fraud upon the Court" to the 3rd DCA. (Appendix - perjury is fraud upon the Court) On

the other hand his only complaint for libel was that the Petitioner libeled him by sending copies of his formal Bar Inquiry to the FBI, the Governor, State Attorney General and other government officers. When Mintz sued the Petitioner for libel, he did not know that the Petitioner had already been inquiring of these government agents or agencies about Mintz's & Truppman's misleading arguments to the courts. ***Appendix 119a-123a***

Also, Mintz & Truppman did not know that the Petitioner only filed his Formal Bar Inquiry at the advice of the Legal Division of the FBI.

Judicial Qualifications Commission

Regarding the Judges, the Petitioner wrote the Senate and House members of their respective Judiciary committees for help. The then chairman of the Senate Judiciary Committee, Senator Joseph Biden, advised the Petitioner to appeal to the Florida Judicial Qualifications Commission concerning the conduct of the Judges in the Eleventh Judicial Circuit Dade County, Florida and the Florida Third District of the Court of Appeals, and the Florida Supreme Court about the actions of the judges in this case. ***Appendix p. 104***

Within one week or less, the Judicial Qualification Committee, without any investigation, replied to the Petitioner that the only thing they can investigate are the overt actions of Judges. Such as if a Judge was drunk or took a bribe. (Interestingly, one of the Judges in this case, Judge Marguerita Esquiroz, was arrested and jailed for a drunk driving accident August 24, 1994 after she recused herself when the Petitioner motioned for her removal and named her as a defendant. Judge Esquiroz refused to entertain the Petitioner's Motion for Final Default Judgment against the Respondent for not appearing at the hearing on May 17, 1993 even though the Respondent was noticed by both the Petitioner and Keith Truppman of the hearing. Although she refused to hear the Petitioner's motion, she did hear Truppman's motion clearly partial and imbalanced justice. The Judicial Qualification Commissions has no empowerment to investigate whether civil Judges improperly applied the law to the facts of this case or if they allowed perjury or fraud upon the Court to go unchecked in his or her court room.

Independent Accountability Needed

Clearly, the founding fathers' meticulous efforts to hold the officers of the Executive and Legislative branches accountable for their stewardship of office and for their actions while in office by requiring the President & Vice President to give an account of their stewardship of office at the ballot box every four years and by limiting their terms to eight years.

They placed the same principle of accountability on the Legislative branch by requiring the Senators to give an accounting of their stewardship of office at the ballot box every six years, and members of the House of representatives every two years.

Since all Judicial appointments are political, maybe it is time to place the same principle of accountability of stewardship of office on the Judicial branch as on the other two. By changing judicial appointments from tenure for life to specific terms of five to six years, after which in order to continue another term, judges would have to stand for reconfirmation. This would bring a public and independent airing of their stewardship of office and would equally apply the same accountability of stewardship of office on the Judicial branch that is already required of the other two branches. This can then be made to apply down to the State and local jurisdictions. Why not? When these officers of the Court have so much power to effect the health, wealth and well being of every citizen, family, business, industry, labor, management, education, government, there needs be some independent accountability on every office holder in all three branches of government. An officer of the Court whether a lawyer or judge at any level is not God and is subject to errors, omissions, and yes, even the F Word - Fraud upon the Court and its citizens..

Evidence of Fraud Upon the Court

The Petitioner has already established the following fraudulent malfeasance of the Respondent:

1. Wrote the policy on only one building instead of seven.
2. Failed to properly underwrite and issue the policy on seven buildings instead of one.
3. Failed to send a formal, timely claim form when notified of the Petitioner's loss. When it did send an untimely claim form, it was an automobile claim form, nearly two years late, not two days late ***Appendix p. 1a***
4. Failed to act fairly or in good faith by denying coverage.
5. That the Respondent's two law firms have committed fraud upon the court.

In this section the Petitioner will show the fraud and liability now the two law firms representing the Respondent.

Keith Truppman like his associate Mintz, continued their tact for the Respondent of continued Fraud upon the Court by stating:

(1) there was no law for bad faith at the time of the Petioner's loss

(2) and that the Petitioner t had no claim for bad faith in his complaints.

During a 1:45 PM, May 17, 1993 hearing before Judge Marguerita Esquiroz on Plaintiff's Motion for Final Default Judgment, Keith Truppman as his associate, Mark Mintz, in previous pleadings and hearing, knowingly, willfully, and wantonly committed Fraud Upon the Court twice when he stated to the Court,

Truppman: "He was upset, because there was no claim for bad faith."

The Court: "What do you mean there is no claim?

Mr. Truppman: "At that time the law did not allow it, so the bad faith was knocked out by numerous judges.

Mr. Stembridge: "Allowed under the tort at the time."

Appendix at end of writ

First, Mr. Truppman boldly lied to the Court that the Petitioner had made no claim for the Respondent's failure to deal fairly and in good faith with the Petitioner.

Secondly, he lied to the Court that there was "no law for a bad faith Claim at the time of the Plaintiff's loss." The Respondent lawyers like every lawyer must pass the Bar exam which has a whole section on Tort law strangly the Reposndent only hires law firms who are ignorant of it or who are willing to jeopardize their practice of law by becoming co-conspirators with the Respondent to commit Fraud upon the Court. ***Appendix pp. 135a, 119a -123a***

Truppman, as his associate Mark Mintz, consistently argued that there was no Fla. law for the causes of action in Petitioner's Second. and Third Amended Complaints in Counts II - V for Fraud, conversion, errors and omission of the agent, insurance code violations, mental and emotional distress, character defamation. Each time they lied to the Court, Judge Goderich with the Stroke of a pen would strike the heart of the Petitioner's complaint. Interestingly, however, the Respondent has never denied defaming the Petitioner by calling him the culprit having his own building torched and vandalized . ***Appendix pp. 133a - 135a***

ARGUMENT

*"**There is Nothing More Powerful than Truth**" - Daniel Webster*

Black's Law Dictionary states that "Bad Faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

Both the Nov. 3, 1998 opinion of the Florida Supreme Court and the April 8, 1998 opinion of the Third District Court of Appeal of the State of Florida are null and void in that they were obtained by "Fraud Upon the Court" Federal Statute 60(b), 9, U.S.C. § 10, Fla. R. Civ. P. 1.540(6) empower this Court to set aside a judgment or proceeding for Fraud upon the Court.

Also "Fla. R. Civ. P. 1.190(e) allows in pertinent part for an amendment of the pleadings "at any time in furtherance of justice," and for the trial court to "disregard any error or defect in the proceedings which does not effect the substantial rights of the parties." ***Appendix pp. 126a - 127a, 136a***

Both the saving clause of Federal R. Civ. P. 60(b), 9 USC § 10, and Fla. R. Civ. P. 1.540(b)(3) provide additional powers to the Courts to set aside a Judgment and proceeding for Fraud upon the Court. ***Appendix pp. 126a, 127a, 136a***

Additional language of the saving clause of the Federal rule reads:

> "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, USC, § 1655, OR TO SET ASIDE A JUDGMENT FOR FRAUD UPON THE COURT." (Emphasis added by Petitioner.)

Federal R. Civ. P. 60(6) clearly states OR TO SET ASIDE A JUDGMENT FOR FRAUD UPON THE COURT. Clearly the United States Supreme Court is empowered by law to set aside these orders or opinions that means Sua Sponte.

The circumstances which both the Federal and State rules will permit invocation of the Savings Clause to relieve a party from a judgment obtained with the assistance of fraud is that fraud which is "fraud upon the court." The definition of "fraud upon the court" offered by Professor Moore and Lucas in Moore's Federal Practice is:

> " 'Fraud upon the Court' should, we believe, embrace only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud, perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Moore & Lucas's examples of "fraud upon the court" include:

> "employment of counsel to 'influence' the court, even though it is not shown that the court was influenced." Certainly this case proves that the Respondent used its law firms to wrongly prejudice the Courts against the Petitioner.

Other examples cited by Moore and Lucas include:

"bribery or other corruption of the court, or a member of the court participating in the decision;"

The first two Judges, Goderich and Salman, that first struck the Petitioner's Counts of Fraud, Bad Faith. Conversion, insurance code violations, emotional cruelty and punitive damages out of 105 circuit judges were Number One and Two on the potential list of appointees to be appointed to the Florida Third District Court of Appeals by then Florida Governor Robert Martinez. Candidates for Governor and other offices need huge sums of money. The insurance industry has extreme wealth and uses it liberally to influence government leaders for favorable decisions. When the Petitioner named Judge Goderich as a defendant, he wanted to get his deposition on record (1) for the reasons he dismissed the heart of the Petitioner's Case and (2) to determine any evidence that his appointment to the Fla 3d DCA was a reward from the insurance industry through the Governor for Goderich unjustly dismissing the Petitioner's Case against the Respondent because of Fraud upon the Court. Although Judges are immune from financial liability for their incompetence or corruption, the Petitioner determined that by naming Judge Goderich as a defendant, he could depose the Judge to ascertain the truth and law for the reasons he dismissed the Petitioner's Complaint no matter the wealth of facts and law supporting the Petitioner's cause of action. ***Appendix pp. 133a - 135a***

The Florida Supreme Court in Yohanan v. deClaire, 421 So. 2d 551 (Fla. 4th District Court of Appeal 1982), rev'd, 453 So. 2d 375 (Fla. 1984) contrast intrinsic fraud from fraud upon the court and extrinsic fraud as follows:

"Intrinsic fraud, on the other hand, applies to fraudulent conduct that arises within a proceeding and pertains to issues in the case that have been tried or could have been tried."

The issues in this case have never been tried. They could have been in Case 80-7272 CA 20 before Judge Goderich and Judge Solomon, Judge Goldstein and Solomon in Case 80-7272 CA 20, before Judges Bloom, Esquiroz, Solomon and Postman in Case # 92-13319 CA 20. But because the Respondents Fraud upon the Court offered by Mintz and Truppman, the Petitioner has still been denied his day in Court.

Black's Law Dictionary defines fraud thusly:

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false misleading allegations, or by concealment of that which should have been disclosed, which deceives." Brainerd and is intended to deceive another so that he shall act upon it to his legal injury.

If the insurance fraud division and other regulatory officers of government, Bar associations and Judicial Qualifications Commission, judges, lawyers were unable or unwilling to expose what was going on in the Petitioner's case, then with God's help, he would put these government officials on the stand to justify their actions. They like the Petitioner when he was sworn in as Mayor of the City of North Miami, Florida, took an oath to uphold the Constitution of the United States of America. What the oath to the Petitioner was that he would do everything within his power and the power of the jurisdiction of his office to equally protect lives and properties of each of his citizens. Unfortunately, this equal protection of the Petitioner's property was denied to him by the very people who took an oath before God and man that they would equally protect the Petitioner's property as well as the Respondent's. ***Appendix 133a -135a*** Because of their malfeasance, the Petitioner continues to suffer severe traumatic unending emotional and financial impact every day of his life. Appmdix 14th ammendment

"Woody" Hampton (Woodward Madison Hampton) long time friend with whom the Petitioner would air his concerns about a biased and prejudicial judicial system, made a profound statement to the Petitioner. "John, you're not fighting just one insurance company, you're fighting the entire insurance industry. They will spend millions of dollars to defeat a case like yours because it exposes the whole industry to damages through the industry's policy of reinsuring each other against cataclysmic claims."

Mr. Hampton was number 4 in class when graduating from law school at Vanderbilt University. He is also a Navy Fighter Pilot Hero, who survived the odds of being shot down three times in the Pacific by the Japanese. He was city manager of Pembroke Pines, Fl. for 25 years while it was the fasting growing area in the United States. Upon retirement, his fellow City Managers around the State of Florida honored him with its first and only "Life Time City Manager's Award."

He knows first hand how things are so often moved throughout all levels of government today.

Further About Fraud, see

Brainard Dispatch Newspaper Co. v. Crow Wing 196 Minn. 194, 264 N.W. 779 780

> "Goldstein v. Equitable Life Asur. Soc. of U.S. 160 Misc. 364, 289 N.Y.S. 1064, 1067 A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of the truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P. 2d 150."

Clearly Judge Mario Godrich's order Dec. 27, 1985 was based on Mintz's misleading argument. For the Petitioner's Amended, Second &

Third Complaints perfectly stated causes of action according to Federal and State Law for (1) Fraud, (2) Bad Faith,(3) Insurance code violations, (4) conversion, (4) mental and emotional cruelty , (5) libel/defamation of character and for (6) punitive damages. ***Appendix_pp. 100a, 133-133a-135a .***

Joiner v. Joiner, Tex Civ. App., 87 SW 2d 903, 914, 915 States that:

It consists of some deceitful practice or willful device resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, It is always positive, intentional. Maker v. Hibernia Ins. Co., 67 NY 292; Alexander v. Church, 53 Conn. 561 4 A.103; Studer v. Bleistein, 115 NY. 316 22 NE 243. 7 L.P.A. 702; McNair V. Southern Stokes Finance Co. 191 NC 710 133 SE 85, 88 St. Comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. Copps v. Copps, 163 Misc. 249, 297 N.Y.S. 744. 750 and includes anything calculated to deceive, whether it be a single act or combination of circumstances whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture.

People v. Gilmore 345 Ill. 28, 177 NE 710,717

Extrinsic or Collateral Fraud: Fraud justifying equitable relief against a judgment or decree means some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a1 fair submission of the controversy. Fairly v. Davis, 10 Wash. 2d 62, 116 P. 2d 263, 268

Mintz's and Truppman's misleading arguments and fraud upon the Court prevented the Petitioner from having a fair submission of the controversy, also due process, jury trial, res judicata, etc. of his just claim against the Respondent..

All three statutes, Fed R Civ P. 60(6), 9 USC § 10, and Fla. R. Civ P. 1.540(6) expressly empower this Court to set aside the lower Courts orders based on Fraud upon the Court. **Appendix pp 106a, 126a -127a. 136a**

Sawyer v. Pricket, 19 Wall 146, 22 L. Ed. 105.

Blair v. McCool, 136 Or. 139, 295 P. 950, 952.

Cobb v. Cobb 211 NC 146, 189 SE 479 482.

Reasons for Granting the Writ

This Writ will unquestionably prove to this Court that the orders and opinions dismissing the Petitioner's Counts of Fraud, conversion, bad

faith, insurance violations, errors and omissions of the Respondent's agent, Rico, mental and emotional cruelty and punitive damages were obtained by Fraud upon the Court by the Respondent's law firm, Ress, Mintz, Truppman, Gomez, Howland, Klein, therefore rendering null and void all orders and opinions in cases 80-7272 CA 20 and 92-13319 CA 20 in the Eleventh Judicial Circuit Dade County, Fl. and in the Fla 3d DCA. Therefore this Court is lawfully empowered to vindicate the Petitioner by setting aside the orders of the lower courts and by finding in his favor and rendering appropriate compensatory and punitive damages to make him and his family whole.

The fraud upon the Court, committed by the Ress, Truppman, Mintz, Gomez, Howland, Klein Firm and now the Richard and Roland Gomez law firms as counsel to the Respondent the past 21 years was at the time of Petitioner's loss in 1977 to the present in 1999 is actionable fraud. Because the law firms representing the Respondent knowingly, willfully wantonly, maliciously committed Fraud upon the Court and the Petitioner now has additional independent causes of action against the Respondent's law firms Ress, Mintz, Truppman, Howland, Klein, and the Roland and Richard Gomez Law firm that are separate and independent from the Respondent, in defending the Respondent, these law firms are never allowed to go outside the bounds of law to defend a client illegally. To do so, causes them to commit Fraud upon the Court. **Appendix pp. 135a, 136a**

Black's Law Dictionary (Page 51) defines ACTIONABLE FRAUD:

> "Deception practiced in order to induce another to part with property or surrender some legal right; a false representation made with an intention to deceive; may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. Sawyer v. Prickett, 19 Wall. 1446, 22 L. Ed. 105."

The Respondent's law firms are without excuse. They were professionally and ethically required to know that Florida forever became a jurisdiction that imposes a covenant of good faith and fair dealing in all first party insurance contracts in Escambia Treating v. Aetna Casualty ('76) or failure of that Public Trust Mandate made that company liable in Tort for punitive damages. **Appendix pp 101a, 103a U. Miami Law Review**

Black's Law Dictionary states that "Bad Faith" and "Fraud" are synonymous and also synonyms of dishonesty, infidelity. faithlessness, perfidy, unfairness, etc."

Bad Faith

Escambia Treating v. Aetna Cas. & Ins. Co., 421 F. Supplement 16367, 1370-71 (ND Fla. 1976) is a landmark case in Florida for bad faith. This decision came down one year before the Petitioner's loss.

In De Marlor v. Foley Carter Ins. Co. 386 So. 20 22 (Fla. 2d DCA 1980), (three years before the Petitioner's Second and Third Amended Complaints) the Second District Court of Appeal reiterated the obligation of an insurer to deal with its insured in good faith and the possibility that a "deliberate violation" of this obligation "in bad faith could justify an award of punitive damages." The Court referenced two other cases which imposed this obligation of good faith and implied duty of good faith for an award of punitive damages.

These two cases are:

Van Woy v. Willis 153 Fla. 189, 14 So. 2d 185 (1943) and

Richards Co., Inc. v. Harrison, 262 So. 2d 258 (Fla. 1st DCA 1972).

Punitive Damages

Four years before the Petitioner's loss, the Florida Supreme Court in Campbell v. Government Employees Insurance Co. 306 So. 2d 232 Fla. 2d DCA 1973 ruled that the insurance company was liable for punitive damages because its conduct involved concealment and misrepresentation amounting to a "continued course of dishonest dealing."

Further it ruled that punitive damages "helped maintain public tranquillity by permitting the wronged plaintiff to take revenge in the courtroom and not by self help." Also, since compensatory damages do not always fully compensate, punitive damages have a "general salutary effect" and "are awarded to the injured party as a reward for his public service in bringing the wrongdoer to account." Id. at 53.

In Fury Imports, Inc. v. Shakespeare Co., 544 F, 2d 1376, 1388 (5th Cir. 1977) "purpose of punitive damages is" to punish the wrong doer for some extraordinary misconduct and to serve as example of warning to others not to engage in such conduct."

In Kos V. Gore, 48 So. 2d 412 414 (Fla. 1950) "Punitive damages" are allowed.

Conclusion

Every 50 years Israel proclaims a year of Jubilee. During the Year of Jubilee, slaves were freed, debts were forgiven, and property restored to its proper owner. The Petitioner prays that this may be a Year of Jubilee for himself.

Hopefully, this Court will swiftly and forcefully ESTOP these law firms who represent the Respondent from continuing their Fraud from rearing its head in these hallowed chambers of the United States Supreme Court.

Based upon the foregoing reasons and citations of authority, the Petitioner respectfully urges this Honorable Court to exercise its discretion and review the merits of the subject controversy.

DISTRICT COURT OF APPEAL
THIRD DISTRICT

JOHN N. STEMBRIDGE,
APPELLANT,
-VS-

PREFERRED RISK MUTUAL INSURANCE COMPANY,
OF IOWA INC.,
APPELLEE

ORIGINAL RECORD ON APPEAL FROM
CIRCUIT COURT OF DADE COUNTY, FLORIDA
CIVIL ACTION CASE NO: 92-13319

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ATTORNEY FOR APPELLEE

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CERTIFIED COPY OF THE FOLLOWING INSTRUMENT TRANSMITTED TO DISTRICT COURT IS NUMBERED TO COINDCIDE WITH THE ORIGINAL.

09/12/96	ORDER DENYING PLAINTIFF'S VERIFIED MOTION TO VACATE JUDGMENT OF DISMISSAL AS AGAINST THE PLAINTIFF AND FOR DEFENDANT PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA	785

STATE OF FLORIDA
COUNTY OF DADE

I, HARVEY RUVIN, Clerk Circuit and County Courts, in and for Dade County, Florida, DO HEREBY CERTIFY that the foregoing pages 1 to 784 inclusive, contain a true and correct recital and inclusion of such original papers and proceedings in the case of JOHN STEMBRIDGE, Pro Se, Plaintiff, against ROBERT KORMER, MARK J. MINTZ. et. al., Defendants, Civil Action Case No: 92-13319;

as appears from the records and files of my office that have been directed to be included in said record.

X Pages 785 to _____, inclusive, embrace certified copy (copies) of the Order(s) appealed to be retained by the District Court.

Volume(s) _____, comprising Pages 1 to _____, inclusive embrace the transcribed notes of the reporter as made at the trials and certified to me by _____ and bound under separate cover.

IN WITNESS WHEREOF I have set my hand and affixed the Seal of said Court.

BY: (stamp) DALLAS WALKER DEPUTY CLERK 8006
HARVEY RUVIN
CLERK OF COURTS DATE December 11, 1996
(stamped) CIRCUIT AND COUNTY COURTS DADE COUNTY, FLORIDA

THIS RECORD. COMPLETED AND FILED IN THE CLERK'S OFFICE. THIS DEC 13 1996 IS TO BE RETAINED FOR USE BY ATTORNEYS, UNTIL A TIME WHEN SAME IS TRANSMITTED TO THE THIRD DISTRICT COURT OF APPEAL.

Seal: Circuit and County Courts
Dade County, Florida

STATE OF FLORIDA)
COUNTY OF DADE)

I HARVEY RUVIN Clerk Circuit and County courts, in and for Dade County, Florida, DO HEREBY CERTIFY that the foregoing pages numbered 785 to _____ inclusive contain a true and correct copy (copies) of the Orders, appealed numbered to coincide with the original papers filed in the case of JOHN STEMBRIDGE, Pro Se, Plaintiff against ROBERT KORNER, MARK J. MINTZ, et al., Defendants,

Civil Action Case No: 92-13319, being as follows, to wit:

ORDER DENYING PLAINTIFF'S VERIFIED MOTION TO VACATE JUDGMENT OF DISMISSAL AS AGAINST THE PLAINTIFF AND FOR DEFENDANT PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, Filed on September 12, 1996;

according to the records and files of my office.

IN WITNESS WHEREOF have set my hand and affixed the Seal of said Court.

HARVEY RUVIN
CLERK OF COURTS
BY (stamp) DALLAS WALKER
DEPUTY CLERK

DATE December 11, 1996

(seal) CIRCUIT AND COUNTY COURTS
DADE COUNTY, FLORIDA

IN THE CIRCUIT COURT OF THE11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY
GENERAL JURISDICTION DIVISION
CASE NO. 92-13319 CA 10

JOHN M. STEMBRIDGE
. Plaintiff
Vs.
PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., JUDGE MARIO GODERICH, MARK MINTZ, KEITH TRUPPMAN, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU,
. Defendants

. 73 West Flagler Street
. Miami, Florida
. May 17, 1993 1:45 pm.
1:45 P.M.

Hearing in above-styled cause taken before Honorable Marguerita Esquiroz, Judge of the Circuit Court, reported by Helen M. Daeder, Shorthand . Reporter and Notary Public in and for the State of Florida at Large, pursuant to . Notice filed in the above cause.

(on page two)

Line 11 MR. TRUPPMAN:

Line 23 He was upset, because there was no claim for bad

Line 24 faith.

Line 25 THE COURT: What do you mean there is

Page 3,

Line 1. no claim?

Line 2 MR. TRUPPMAN: At that time the law did not

Line 3 allow it, so the bad faith was knocked out by

Line 4 numerous judges --

Line 5 MR STEMBRIDGE: Allowed under the tort at

Line 6 that time.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA 33128
JULY 27,1995

CASE # 92-13319 CA 20

NOTICE FOR JURY TRIAL

JOHN M. STEMBRIDGE, Pro Se

545 N. E. 125th Street

North Miami, Florida 33161

PLAINTIFF

VS.

PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC.,

MARK MINTZ, KEITH TRUPPMAN, SAM HOLLAND et,al.

1111 Ashworth Drive

West Des Moines, Iowa 50265

DEFENDANTS

This case is now at issue. The Plaintiff estimates the Jury trial will take 3-5 days.

I certify that a true and correct copy of the foregoing was mailed to the Defendants, this 27th day of July, 1995.

"s_____"

John M. Stembridge, Pro Se

John M. Stembridge
545 N.E. 125th Street
North Miami, Florida 33161
Telephone: (305) 893-0800
Fax: (305) 893-0654

October 12, 1995

Richard M. Gomez
8100 Oak Lane
Suite 400
Miami Lakes, Florida 33016

RE: STEMBRIDGE vs. KORNER, MINTZ, PREFERRED RISK, etc., et al, Dade County Circuit Court Case No.: 92-13319 CA. 20

Dear Mr. Gomez:

Regarding your letter dated 9/28/95, Re: Stembridge vs. Preferred Risk, etc., et al., I checked with Judge Postman's legal assistant Ms. Margie Cruz about your inquiry to her. She stated that she never told you to disregard the Court Order for Jury Trial. As you and your client are well aware, this case is still at issue therefore the court has correctly set the date for jury trial. Should your client desire to settle this matter before that date, I am willing to meet with you to discuss settlement terms.

Sincerely,
"s/__
John M. Stembridge

cc: Ms. Margie Cruz, Legal Assistant to Judge Alan Postman
11th Judicial Circuit – Dade County – Dade County. Florida
Case No. 92-13319 CA 20

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
Case No. 92-13319 (CA 25)
Judge Alan Postman

John M. Stembridge, Pro Se
Plaintiff
Vs.
Preferred Risk, et al.,
Defendants

PLAINTIFF'S NOTICE

In response to Defendant Preferred Risk's request to be removed form all Certificate of Mailings, the Plaintiff would state that it is important for counsel for Preferred Risk to be aware that the Court's ruling that dismissed the Plaintiff's Motion for Default Judgment was only that, a dismissal of the Plaintiff's Motion for a Final Default Judgment.

It is also important for Counsel for Preferred Risk to be aware that the Plaintiff's case has never been heard on its merits. The Plaintiff has notified the Court that this case is at issue. The Court has set jury trial for March 25, 1996.

Plaintiff is prepared now to proceed to jury trial according to the Court's Order

I certify that true and correct copy of the foregoing was mailed this 16th day of November, 1995 to the above Defendants.

"s_____"
John M. Stembridge, Pro Se

Supreme Court, U.S.
FILED
MAR 12 1999

(2)

No. 98-1474

In the

Supreme Court of the United States

October Term, 1998

John Madison Stembridge – *Petitioner*
Pro Se

Vs.

Preferred Risk Mutual Insurance Co.
of Iowa, Inc – *Respondent*

APPENDIX

On Petition for a Writ of Certiorari
to the Florida Court of Appeals for the Third District

PETITION FOR WRIT OF CERTIORARI

John Madison Stembridge, *Pro Se*
545 N.E. 125 St.
North Miami, FL 33161-4718
305-893-0800

15288

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA THIRD DISTRICT JANUARY TERM 1998

JOHN M. STEMBRIDGE,

Appellant,

v.

PREFERRED RISK MUTUAL INSURANCE COMPANY OF IOWA, ROBERT KORNER, MARK J. MINTZ, HOWARD NEU, BYRD DUKE, SAM HOLLAND, AND JUDGE MARIO GODERICH,

Appellees

CASE NO. 96-2807

Opinion filed April 8, 1998

Appeal from the Circuit Court for the Eleventh Judicial Circuit, Dade County; Alan L. Postman, Judge; L.T. Case No. 92-13319 CA.

L. Daniel Ferrer of Lyons & Farrar, P.A., Coral Gables, for appellant.

Richard Gomez of Law Offices of Roland Gomez, Miami Lakes, for Appellee-Preferred Risk Mutual Insurance Company of Iowa.

STONE, BARRY J., Associate Judge.

We affirm an order denying a motion to vacate a judgment of dismissal. The action was dismissed with prejudice on January 9, 1995, following a series of amended complaints. On August 2, 1996, Stembridge moved to vacate the judgment based on mistake, inadvertence, or excusable neglect, pursuant to Florida Rule of Civil Procedure 1.540(b)(1). The court entered the order denying the motion without a hearing.

Stembridge argues that the court erred by denying his motion without conducting a hearing. See Aetna Life & Cas. Co. v. Thorn 319 So. 2nd 82, 84 (Fla. 3d DCA 1975). However, a hearing on the merits of the motion was unnecessary because the August 2, 1996 motion under the provisions applicable here must be made not more than one year after entry of the judgment. The judgment from which he sought relief was filed on January 9, 1995. Thus, the rule required Stembridge to file his motion to vacate the judgment by January 9, 1996.

We recognize that the judgment of dismissal was on appeal to this court until the mandate was issued July 31, 1995. However, an appeal does not stay the one year period for filing the rule 1.540(b) motion. See Flemenbaum v. Flemenbaum, 636 So. 2d 579, 580 n.1 (Fla. 4th DCA 1994); Legler v. Kwitney Kroop & Scheinberg, P.A, 520 So. 2d 95, 95 (Fla. 4th DCA 1988). In any event, the motion to vacate was filed more than a year after that mandate. Therefore, the judgment of dismissal must be affirmed

POLEN, MARK and KLEIN, LARRY, Associate Judges, concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA THIRD DISTRICT JANUARY TERM 1998

NOT FINAL UNTIL THE
DISPOSITION OF ANY TIMELY
FILED MOTION FOR
REHEARING.

RECEIVED APR 13 1998

SUPREME COURT OF FLORIDA
TUESDAY, November 3, 1998

John M. Stembridge	*	
Petitioner,	*	**Case No. 92,996**
v.	*	**District Court of Appeal,**
	*	**3rd District - No. 96-2807**
PREFERRED RISK	*	
MUTUAL INSURANCE	*	
COMPANY OF IOWA, et al	*	
Respondents		

****

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V., Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that Petition for Review is denied.

No motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Respondents' Motion to Strike Petitioner's Jurisdictional Brief is denied.

OVERTON, SHAW, KOGAN, WELLS and PARIENTE, JJ., concur.

(stamped)

A True Copy TEST **BH**

(seal) Supreme Court of the State of Florida

cc: Hon. Mary Cay Blanks, Clerk
Hon. Harvey Ruvin, Clerk
Hon. Alan L. Postman, Judge
Mr. L. Daniel Ferrer
Mr. Richard Gomez

"s/_____

Sid J. White
Clerk, Supreme Court

GLOBAL BILL OF RIGHTS

Seeking to Unite all people who are:

I. Committed to building bridges of love and understanding between Jews, Arabs and Gentiles throughout the world.

II. Committed to building up the Middle East and ;the world with Justice, Peace Freedom, Health, Education and prosperity for all.

III. Committed to eliminating ignorance, hunger, poverty, bigotry, prejudice and discrimination against all colors, languages and ethic groups of the world.

IV Committed to establishing the Bill of Rights (respect and dignity) for all who are still living under the heel of oppression anywhere in the world.

V. Committed to open borders and free trade throughout the world.

VI. Committed to full integration of the Middle East and the world: granting every Jew, Arab and Gentile the right to live, study and work where they choose; as long as each respects the life and property of every other person on the earth.

VII. Committed to the reconciliation of all of Adam's descendants, whether Jewish, Arab or Gentile, through grace, mercy, truth and love.

VIII. Committed to using the world's finances and militaries to eliminate famine, drought, hunger, poverty, injustice and oppression from the earth.

IX. Committed to turning weapons of war, death and destruction into equipment for clean air, water, agriculture and animal husbandry for the economical feeding of the masses.

X,. Committed to establishing communications and transportation systems that reach the remotest areas of the earth.

(By) John Stembridge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA 33128

APRIL 17,1995

CASE # 92-13319 CA 20

JOHN M. STEMBRIDGE, PRO SE
545 N. E. 125TH STREET
NORTH MIAMI, FLORIDA 33161
PLAINTIFF

VS.

PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA INC.
DEFENDANT

(stamped)
Original filed
April 18,1995 Clerk

MOTION FOR FINAL DEFAULT JUDGEMENT

Comes now the Plaintiff, John M. Stembridge who files this motion's for a Final Default Judgement against Preferred Risk Mutual Insurance Co. of Iowa Inc. for failure to answer or deny within 20 days the Plaintiff's June 24, 1993 Summons and Complaint. According to rules 1.500 and 1.110(e).

I certify that a true and correct copy was mailed this 17th day of April 1995 to the above defendant.

(handwritten:)

State of Florida

County of Dade

April 17, 1995

"s/ Eddie M. Ohi, Jr
Notary

(stamped) Official Notary Seal
Eddie M. Ohi, Jr.
Notary Public State of Florida
My commission exp. Oct. 19, 1995

"s/ John M. Stembridge
Pro Se

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY
FLORIDA
GENERAL JURISDICTION
CASE NO. 92-3319 (CA20)

JOHN STEMBRIDGE,
Plaintiff,

vs.

ROBERT KORNER, MARK J. MINTZ,
HOWARD NEU, BYRD DUKE, SAM
HOLLAND, JUDGE MARIO GODERICH,
AND PREFERRED RISK MUTUAL
INSURANCE COMPANY OF IOWA,
Defendants,

_____/

PLAINTIFF'S VERIFIED MOTION TO VACATE JUDGMENT OF DISMISSAL, WITH PREJUDICE, AS AGAINST THE PLAINTIFF OR FOR DEFENDANT PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA.

COMES NOW the Plaintiff, JOHN STEMBRIDGE ("STEMBRIDGE"), by verification herein, and through undersigned counsel, pursuant to Florida Rules of Civil Procedure, and files this his MOTION TO VACATE JUDGMENT OF DISMISSAL, WITH PREJUDICE, AGAINST THE PLAINTIFF AND FOR THE DEFENDANT PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA ("PREFERRED RISK"), and as grounds therefore would present the following,

1. This matter was noticed for trial on the Court's March 25, 1996 trial calendar.

2. All the Defendants in this action had, prior to the Notice For Trial, filed motions for dismissals or summary judgments based upon STEMBRIDGE's repeated failures to clarify the material liability issues in order to properly state a cause of action under Florida law. The Defendants and the Court knew that STEMBRIDGE was appearing pro se since late in 1992.

3. On or about January 25, 1996, while STEMBRIDGE was out of the country and unable to obtain legal counsel, Judge Sam Silver entertained the Defendant's MOTION TO CLARIFY TRIAL STATUS OF CAUSE in

this matter. Judge Silver granted Defendant's motion and removed the matter from the March 25, 1996 trial docket, essentially ending STEMBRIDGE's cause of action against PREFERRED RISK. Nonetheless, Judge Silver stated in that Order "Should the Plaintiff believe that any further matters are to come before the court, he shall file a motion with the court to that effect". A true and correct copy of the January 25, 1996 Order is attached hereto as Exhibit "A".

4. Subsequent to that hearing, STEMBRIDGE, appearing pro se, filed a Motion for Rehearing And For Relief From Orders/Judgments, which, after hearing on March 7, 1995, was DENIED without prejudice by this Court.

5. On or about March 11, 1996, undersigned counsel, on behalf of STEMBRIDGE, filed a statutory NOTICE OF CIVIL REMEDY, pursuant to Florida Statute, Section 624.155, citing numerous actionable statutory violations of the Florida Insurance Code by PREFERRED RISK in their handling and investigation of the underlying liability claim of STEMBRIDGE. A true and correct copy of said Notice is attached to this motion as Exhibit "B".

6. Undersigned counsel has additionally been retained by STEMBRIDGE to properly amend and submit to this court STEMBRIDGE's complaint for damages as against PREFERRED RISK, to conform to Florida Rules and law, and to move to drop all non-essential party Defendant's and eliminate the prior confusion caused by the pro se STEMBRIDGE in his improper and repeated attempts to consolidate his actions against all Defendants.

MEMORANDUM

7. STEMBRIDGE, while appearing pro se for almost four (4) years, has mistakenly attempted to consolidate several unrelated causes of action, inadvertedly injected personal and unprofessional attacks upon the judiciary and members of the Florida bar, and has generally, through incompetence in and ignorance of legal procedures, disregarded and neglected the amendment suggestions of this and other courts. Such actions by a party, while certainly not condoned, may be nonetheless excusable, under these circumstances, within a reasonable time period.

8. Florida Rule of Civil Procedure 1.540 (b) (1) allows the Court, upon such terms as are just, the discretion to relieve a party from a final order or proceeding for such mistakes, inadvertence, and excusable neglect. A successor judge also has the authority to reconsider and vacate final judgment. Batista v. Batista, 553 So. 2d 1281 (3rd DCA 1989).

9. The lack of clarity in a plaintiff's complaint for damages should not be the basis for final judgment. See, Boucher v. 1st Community Bank of

Orange City,. 626 So. 2d 979 (Fla. 5th DCA 1993). And Florida public policy requires that the courts be ever vigilant in making summary disposition of causes, lest such judgments erode or destroy fundamental rights of litigants to have material issues tried by a jury. Litigants' right to a jury trial on the merits of a cause of action should be zealously protected. See, Vandyk v. Southside Gun, Inc., 638 So. 2d 138 (Fla. 1st DCA 1994).

10. Upon the granting of such allowable relief, STEMBRIDGE, by and through undersigned counsel, intends to file a timely and proper Motion To Amend Complaint, pursuant to Florida Rule of Civil Procedure 1.190, which requires the court to disregard any errors or defects in the proceedings which does not affect the substantial rights of the parties. STEMBRIDGE intends dropping all non-essential party Defendant's in this action and stating recognizable equitable and statutory causes of action as against the underlying Insurer/Defendant, PREFERRED RISK. Leave of the court to file such amended pleadings shall be given freely when justice so requires, and motions for leave of court may be made by any party at any time, even after judgment. The amended STEMBRIDGE complaint would relate back to the date of the original pleading.

11. This Verified Motion To Vacate Judgment Of Dismissal, With Prejudice, is essential to STEMBRIDGE's equitable and legal rights and interests as against PREFERRED RISK, in that as a part of their response and denial to the Civil Remedy Notice filed on behalf of STEMBRIDGE, PREFERRED RISK concedes that the filing of any claim for statutory violations of the Florida Insurance Code against them in their handling of the underlying insurance claim expired on December 15, 1992 and claims that the June 11, 1992 lawsuit has been fully adjudicated implying a decision on the merits of the alleged violations. A true and correct copy of PREFERRED RISK'S statutory written response to the Civil Remedy Notice is attached hereto as Exhibit "C". STEMBRIDGE's initial complaint against PREFERRED RISK was timely filed on June 11, 1992. STEMBRIDGE strongly disputes the accuracy of PREFERRED RISK's determination of the expiration of the statute of limitations and any adjudication on the merits of the alleged statutory violations, and submits to this court that the judgment of dismissal, with prejudice of STEMBRIDGE's initial complaint, would effectively erode and destroy his fundamental right to have a jury trial on the merits of his equitable and statutory claims against his insurer, PREFERRED RISK. An amended complaint to clarify bad faith actions against a liability insurer should be permitted, where the proposed amended filing would not have changed the basic issues in the case or materially varied originally asserted grounds for relief. Odom v. canal insurance company, 582 So. 1203 (Fla. 1st DCA 1991).

12 STEMBRIDGE herein verifies, upon information and belief, that the facts stated in this motion are true and accurate and that his prior actions in this matter have not been with the intent to delay or prejudice the rights or interests of any of the Defendants to this actions. The equitable relief sought by this motion is within a reasonable amount of time from the date of the judgment of dismissal; shall prevent, if granted, the finality of the court's Dismissal, with prejudice, of STEMBRIDGE'S initial amended complaint as against the Insurer/Defendant PREFERRED RISK; and shall be upon; such terms as are just and in furtherance of justice to the legal and equitable interests of the insured complainant, STEMBRIDGE, without prejudice to the substantial rights of PREFERRED RISK.

WHEREFORE, STEMBRIDGE prays for an Order by this honorable court GRANTING his Motion To Vacate Judgment of Dismissal, With Prejudice, As Against Plaintiff And For Preferred Risk Mutual Insurance Co. Of Iowa, and for appropriate time to file his Motion For Leave To Amend Complaint as against the Defendant, PREFERRED RISK, and for such other and further relief as is appropriate, under the facts and circumstances of this cause.

"s/_____
JOHN STEMBRIDGE, Plaintiff

Respectfully Submitted,

L. DANIEL FERRER, ESQ.
OF COUNSEL
LYONS AND FARRAR, P.A.
201 Alhambra Circle
Suite 711
Coral Gables, Fl 33134
(305) 567-1720

BY:_____
L. Daniel Ferrer, Esq.
FBN 739510

THE CIRCUIT COURT OF THE 11TH
JUDICIAL, CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO.: 80-7272 CA-20

JOHN M. STEMBRIDGE,
Plaintiff,
vs.
PREFERRED RISK MUTUAL INSURANCE COMPANY,
Defendant.

SECOND AMENDED COMPLAINT

_____/

Plaintiff, JOHN M. STEMBRIDGE, sues Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, and alleges:

1. This is an action for damages that exceeds $2,500.00 on Standard Fire Insurance policy issued by Defendant on April 1, 1976.

2. Plaintiff is a resident of the City of North Miami, Florida and was at all times material herein mentioned the owner of certain real property described as nine family apartments located at 2233 Pierce Street, Hollywood, FL.

3. Defendant is a foreign corporation duly authorized to do general insurance business on the State of Florida.

4. In and by its certain Standard Fire Insurance Policy, No. 1-026-227, a copy of which is attached as Exhibit "A", duly executed and delivered to Plaintiff at 14923 N.W. 7th Avenue, Miami, Dade County, Florida on approximately April 1, 1976, Defendant in consideration of the sum of $537.00 per year for three years on annual deferred premium pay plan which had been paid to it by Plaintiff for April, 1976 and April 1977, insured Plaintiff against all direct loss or damage by fire, extended coverage and/or vandalism and mischievous to an amount not exceeding $30,000.00 on Plaintiff's real property located at 2233 Pierce Street, Hollywood, Florida, consisting of one story, seven buildings arranged into nine apartments.

5. At all times herein mentioned, Plaintiff was the owner of the above described premises.

6. Home Federal Savings and Loan Association, loan number 3510, has been paid in full, and it has satisfied the mortgage encumbering said property.

7. In and by said policy, Defendant agreed to make good to Plaintiff all such loss and damages, not exceeding $30,000.00 as should be caused to said property by fire, extended coverage, vandalism and mischievous mischief from April 1,1976 to April 1,1979 to be paid by Defendant within sixty (60) days after proof of loss were received by the Defendant.

On or about May 3,1977; May 21,1977; June 6,1977 and June 10,1977 while said policy was in full force and effect, said property insured was while located and contained in accordance with provisions of said policy, damaged and/or destroyed, said fired and vandalism and mischievous mischief did not occur from any one of the excepted clauses in said policy.

8. The true and actual value of said property so damaged was at least the sum of $57,096.00.

9. Plaintiff duly gave oral and written notice of loss within sixty (60) days and the Defendant had due notice of said loss and sent its adjuster, Paul Westberry to inspect the property and to determine Plaintiff's loss form furnished Plaintiff was for damage to automobile.

10. Plaintiff duly gave sworn statements in proof of loss dated June 21, 1978 a copy is attached as Exhibit "B", which were then received and have since been retained by the Defendant without action. More than sixty (60) days have elapsed since receipt by the Defendant of due notice, ascertained, estimate and satisfactory proof of loss in accordance with the terms and conditions of said policy.

11. Defendant has paid to Plaintiff no part of said sum of $30,000.00.

12. That on January 29, 1980 pursuant to line 123-140 of said policy, Plaintiff's attorney designated Robert C. Birmelin, Esquire as appraiser and Defendant by failing to appoint an appraiser has waived appraisal.

13. The Defendant did not at anytime advise the Plaintiff that his method of evaluating the Plaintiff's loss would result in a determination of value materially different than the amount of $30,000.00 set forth in the policy, which amount Defendant knew Plaintiff reasonably believed to be the amount which would be paid if damages equaled or exceeded that amount.

COUNT 1

Plaintiff realleges all of the foregoing and further alleges:

14. As a result of the course of dealings between the Plaintiff and the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY the reasonable expections of the Plaintiff was that coverage provided by the Defendant would be $30,000.00 or an amount not materially different from said amount.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, for damages in excess of $2,500.00, plus costs, interest and attorney's fees.

COUNT II

Plaintiff realleges all of the foregoing and further alleges:

15. Subsequent to the loss to the Plaintiff's property, which was insured by the Defendant, the Plaintiff duly notified the Defendant and attempted to obtain payment for said losses.

16. Notwithstanding the reasonable expectations of the Plaintiff that he was entitled to $30,000.000 for loss of property, Paul Westberry while acting within the course and scope of his authority as an employee and/or agent of the Defendant, time and under different circumstances. No reason was given for the different amounts.

17. During the course of settlement negotiations with the Plaintiffs and while acting within the scope and course of his employment with the Defendant, Paul Westbury conducted himself in the following manner:

a. Frequently was amused by the situation Plaintiff found himself in.

b. Was difficult to contact and failed to respond to Plaintiff's requests for a speedy resolution of the matter.

c. Was rude, callous and inattentive to Plaintiff.

18. The course of the settlement negotiations between the Plaintiff and Defendant extended over a period of approximately two(2) years through no fault of the Plaintiff but rather as a result of willful and deliberate delays caused by the Defendant, or in the alternative, negligence on the part of the Defendant in failing to evaluate the loss and carry on meaningful settlement negotiations within a reasonable amount of time.

19. The aforesaid conduct on the part of Paul Westbury, while acting within the scope and course of his employment with the Defendant, amounted to callous highhandedness, stonewalling, attempting to wrongfully induce the Plaintiff into settlement, was of such a nature especially calculated to cause severe emotional distress to the Plaintiff, was communicated in such a manner as to reasonably imply malice and was done intentionally or in reckless and total disregard for the rights

of the Plaintiff and was designed solely to intimidate, distress, oppress, or otherwise wrongfully induce or coerce the Plaintiff into settlement.

20.As a result of the foregoing, the Defendant is guilty of fraud and intentional infliction of mental distress, which conduct was intended and did cause the Plaintiff to suffer considerable and severe emotional distress and concern.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, for compensatory damages in excess of $2,500, plus costs, interest and attorney's fees and punitive damages in an amount in excess of $25,000.00.

COUNT III

Plaintiff realleges all of the foregoing and further alleges:

21. The Plaintiff has suffered the loss of use of his property or a portion of his property and the rents it would have produced as a result of Defendant's various wrongful acts and breaches described herein.

22. As a further result of the conduct and actions of the Defendant described herein, the Defendant is guilty of breach of contract of insurance with the Plaintiff, and the Plaintiff has hired attorneys to represent his interest and has incurred attorney's fees and cost in the prosecution of this action.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment for damages in excess of $2,500.00, plus cost, interest and attorney's fees against the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, a foreign corporation for loss of use of property.

COUNT IV

Plaintiff realleges all of the foregoing and further alleges:

23. PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees, made or issued, or caused to be made or issued, certain statements misrepresenting the terms of the policy issued and misrepresenting the benefits or advantages promised by the policy, in that:

a. PREFERRED RISK MUTUAL INSURANCE COMPANY'S employees or agents told the Plaintiff that the property was insured or $30,000.00 in the event anything should happen to the property.

b. During the entire time the policy was in force, PREFERRED RISK MUTUAL INSURANCE COMPANY assessed the Plaintiff's premiums based on the same insured value as that established in the initial policy, namely $30,000.00. PREFERRED RISK MUTUAL INSURANCE COMPANY thus affirmatively misrepresented to the Plaintiff the amount PREFERRED RISK MUTUAL INSURANCE COMPANY intended to pay in the event a covered loss were to occur.

24. In adjusting the Plaintiff's claim for the property damage loss, Defendant's employees and agents also misrepresented the terms, coverage and effect of the insurance policy, for the purpose and with the intent of effecting settlement of the Plaintiff's claim under their PREFERRED RISK MUTUAL INSURANCE COMPANY policy on less favorable terms than those provided in and contemplated by the policy, in that:

a. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, misrepresented the amount of damage experienced.

b. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, did not follow the policy terms in computing the amount which the property was worth at the time of the casualty.

c. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, did not follow the policy terms in making the offers of $5,000.00 to $12,000.00 and did not pay or offer to pay the sum for which the premium have been charged:

25. PREFERRED RISK MUTUAL INSURANCE COMPANY, in making the misrepresentations referred to above, knew or should have known that the Plaintiff would rely on those statements made.

26. Plaintiff justifiably relied on the representations made to him by the agents and employees of PREFERRED RISK MUTUAL INSURANCE COMPANY; the Plaintiff was damaged as a result.

27. The misrepresentations made by the agents and employees of Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, constitute a violation of Chapter 626, Florida Statutes.

28. In addition to the foregoing, Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, deliberately and intentionally acted contrary to the best interests of the Plaintiff as a member of the insuring public and violated the public trust vested in PREFERRED RISK MUTUAL INSURANCE COMPANY as a licensed insurer in the State of Florida in that:

a. PREFERRED RISK MUTUAL knew or should have known its adjusters would fail to advise the Plaintiff of his rights in accor -

dance with the terms and conditions of the contract and of the ap plicable laws of the State of Florida, as set forth in more detail above:

b. PREFERRED RISK MUTUAL INSURANCE COMPANY, in adjusting the Plaintiff's claims, failed to approach the investigation, adjustment and settlement of the Plaintiff's claim with an unprejudiced and open mind, as required by the Code of Ethics for Insurance Adjusters;

c. PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees, failed to make truthful and unbiased reports of the facts found after making a complete investigation; in fact, Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, never did make a complete investigation of the Plaintiff's claim because of its failure to contract persons having first-hand knowldege of the condition of the property and the applicable code provisions pertaining thereto.

d. PREFERRED RISK MUTUAL INSURANCE COMPANY failed to handle the Plaintiff's adjustment and settlement with the honesty and integrity required by the Code of Ethics for Insurance Adjusters;

e. Defendant PREFERRED RISK MUTUAL INSURANCE COMPANY, failed to handle the Plaintiff's claim with the requisite dispatch and due diligence, and instead delayed the settlement pro cess by failing to completely advise the Plaintiff of his rights under the policy and under the laws of the State of Florida, by failing to give complete information as to PREFERRED RISK MUTUAL INSURANCE COMPANY'S claims procedure and the informa tion needed before a complete evaluation of the damage to the property would be undertaken.

29. This conduct by Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY constitutes a violation of Chapter 626 Florida Statutes, and also violates the Code of Ethics for Insurance Adjusters, promulgated by the Department of Insurance as part of the Rules of the Department of Insurance.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against PREFERRED RISK MUTUAL INSURANCE COMPANY, for damages in excess of $2,500.00. Plaintiff also demands judgment against PREFERRED RISK MUTUAL INSURANCE COMPANY for costs, interest and attorney's fees.

COUNT V

Plaintiff realleges all of the foregoing and further alleges:

30. PREFERRED RISK MUTUAL INSURANCE COMPANY, and persons acting at the direction of and on behalf of PREFERRED RISK MUTUAL INSURANCE COMPANY, utilized sits premium rate structure and schedules to charge premiums based on the value of the property in excess of the amount PREFERRED RISK MUTUAL COMPANY ever intended to pay in the event of a loss; by such acts, PREFERRED RISK MUTUAL INSURANCE COMPANY misappropriated sums of money belonging to the Plaintiff and converted these sums to the improper and illegal use and benefit of the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY.

a. The sums of money referred to above constitute property of value, including rights, privileges, interest and claims of the Plain tiff in such property.

b. PREFERRED RISK MUTUAL INSURANCE COMPANY and persons acting at the direction of and on behalf of PREFERRED RISK MUTUAL INSURANCE COMPANY, obtained or used the Plaintiff's property:

1) By taking or exercising control over such property through the use of rate schedules relied on to compute premiums based on amounts in excess of any amount PREFERRED RISK MUTUAL INSURANCE COMPANY ever intended to pay;

2) By making unauthorized and improper use, disposition or transfer of such property;

3) By stealing, larceny, purloining, abstracting, embezzlement, misapplication, conversion or obtaining property by false pretenses, fraud or deception or

4) Other conduct similar in nature, with the intent to deprive the Plaintiff of the right to the property and with the intent to appropriate the property to PREFERRED RISK MUTUAL INSURANCE COMPANY'S use and benefit or to the use and benefit of a person not entitled thereto.

c. As a result of PREFERRED RISK MUTUAL INSURANCE COMPANY'S CONDUCT, Plaintiff retained attorneys and is obligated to pay said attorneys a reasonable fee for their services, and has been caused to spend or incur obligations for expenses and costs of investigation and litigation.

31. This misappropriation by Defendant, PREFERRED RISK MUTUAL of certain sums of money belonging to the Plaintiff constitutes a violation of Chapter 812, Florida Statutes.

32. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, is liable to the Plaintiff for threefold the actual damages caused by the conduct set forth in the prior paragraphs, together with Plaintiff's attorney's fees and costs of investigation and litigation.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, in an amount if excess of $2,500.00, together with the costs of investigation, litigation and attorney's fees. Plaintiff also demands trial by jury of all issues so triable as of right.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Second Amended Complaint was mailed this 31st day of October, 1983 to MIGUEL A. ORTA, ESQUIRE, LAW OFFICES OF RESS, GOMEZ ROSENBERG & HOUSLAND, P.A., Atorneys for Defendant, 1700 San Souci Boulevard, North Miami, Florida 331181.

LAW OFFICE OF ROBERT D. KORNER
Attorney for Plaintiff
4790 Tamiami Trail (305) 446-3587
Coral Gables, Florida 33134

By: ROBERT D. KORNER
(stamped)
ROBERT D. KORNER

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION
DIVISION

CAST NO. 92-13319CA10

(Stamped):
THE ORIGINAL FILED
ON FEB 16 1993
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

JOHN M. STEMBRIDGE,

Plaintiff,

vs.

AMENDED COMPLAINT

PREFERRED RISK MUTUAL INS.
CO. OF IOWA, INC., JUDGE MARIO
GODERICH, MARK MINTZ, KEITH
TRUPMAN, BYRD & MARIE DUKE,
ROBERT & JEAN KORNER, SAM
HOLLAND, HOWARD NEU,

Brief History of the Case

Mr. Chesterfield Smith, past President of the American Bar Association has said there is an incompetent "freeze of 20 to 25 percent of the" lawyers now practicing whom he would not trust to do anything, quoted from "You and your lawyer" by Herbert S. Denemberg, former Professor of law, Temple University; former Commissioner of Insurance, Commonwealth of Pennsylvania.

Contrary to Judge Bloom's testimony of his inability to understand the Plaintiffs claim after seven months of motions and hearing in his chambers, this case is very simple. Simply put, it involves crime and its cover up by the defendants for nearly sixteen years.

First, it involves the hate crime of anti-Semitism against the Plaintiff, JOHN M. STEMBRIDGE, and his neighbor, Bill Schieb, who resides at 2236 Pierce Street, Hollywood, Florida.

Secondly, it involves crimes of arson and malicious vandalism committed against the Plaintiffs property located at 2233 Pierce Street, Hollywood, Florida which occurred in 1977.

Thirdly, it involves crimes of fraud, civil theft, defamation of character, conversion, intentional infliction of mental and emotional cruelty, all perpetrated upon the Plaintiff, JOHN M. STEMBRIDGE, by PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. The claim further involves a RICO criminal scheme devised by the defendants to cover and protect PREFERRED RISK from having the above allegations of illegal and tortuous actions against the Plaintiff, JOHN M. STEMBRIDGE, being heard by a panel of impartial jurors for nearly 16 years.

Fourthly, it involves the crime of obstruction of justice by those in the judicial system who are sworn to uphold the Constitution by protecting the lives, property and rights of its citizens.

Fifthly, it involves the crime of perjury and dishonesty toward the court concerning the facts and laws as they apply to the Plaintiffs losses and claims against PREFERRED RISK.

In 1988, during the hearing on Motion For Attorneys Fees, SAM HOLLAND was quoted as saying to Judge Salman: "Your Honor, what PREFERRED RISK did to my client is against the law since the Bad Faith Statute in 1981." What MR. HOLLAND knew, but failed to tell the Court, (either at that time or any time before) was that what PREFERRED RISK did to his client in 1977 was also a violation of tort law then as well as the Bad Faith Statute since 1981.It is this Plaintiffs contention that the authors of the Constitution provided for remedies to even the least American to be

protected from fraud and theft by the courts. PREFERRED RISK stole the Plaintiffs protection and converted said funds to its own use for nearly sixteen (16) years, thereby depriving the Plaintiff of the coverage provided for and for which the Plaintiff paid money.

Like a pack of thieves with no honor, all of the above Defendants, have conspired, along with the insurance industry, to profit themselves financially by protecting PREFERRED RISK from being required to account for their alleged criminal acts and have done so at the expense of the Plaintiff. The partial and unilateral protection afforded to the Defendants by the courts have deprived the Plaintiff of his dignity, well being, livelihood, and his civil and constitutional rights. This is a reservation of the Plaintiffs opinion of the Defendants actions after nearly sixteen (16) years of abuse by the justice system.

For the past sixteen years, the Plaintiff has suffered at the hands of the Defendants and has experienced mental anguish, harassment, denigration and financial deprivation, all of which have been perpetrated at the expense of the Plaintiff and inured to the benefit of the Defendants.

In order to protect the benefits and rights of nearly 300,000,000 American citizens, the Plaintiff moves this court for an order which will rectify this situation and cause the Defendants to be accountable for their wrongful acts, and by such order, make these Defendants stand as an example to all judges, lawyers, and insurance companies who, by this type of actions, create pain and suffering to many such as the Plaintiff. It now appears that Judge Bloom has joined the ranks of the many other Circuit and Appellate judges who have acted in such a manner as to protect insurance companies involved in such fraud and specifically in this case PREFERRED RISK.

PRESENT STATUS

The Judge is responsible to notify a person trying a case Pro Se of any specific mistakes concerning rules and procedures which he is not following.

It is possible that the Plaintiff, not being formally trained in law has made several mistakes that he is not knowledgeable of, but the Defendants lawyers and judges who are formally trained in law have also made mistakes which the court has not equally challenged as it has the Plaintiff in this case such as:

A. For seven months Judge Bloom has followed the examples of all the other circuit and appellate judges in the Plaintiffs Case No. 80-7272 CA by unilaterally protecting PREFERRED RISK as well as the other Defendants now in this case from having to answer any of the

charges in any of the Plaintiffs complaints since June 1, 1992, or for their failure to answer to sign a final default judgement against said Defendants in favor of the Plaintiff.

B. In September 1, 1992 transcript, Judge bloom never cross examined the Defendants as he did the Plaintiff as to why they failed to answer in writing within the allotted time the Plaintiffs June 1, 1992 Summons and Complaint nor did he specifically ask them as required by law to verbally answer in his Chambers as to whether they conspired to defraud the Plaintiff as alleged. The Judge was knowingly or unwittingly protecting the Defendants and was in error by not ordering the Defendants to answer the Plaintiffs Summons and Complaint or for their continued failure to sign a Final Default Judgement. Instead, he chose to continue as the previous Judges since 1977 to protect PREFERRED RISK'S illegal actions while continuing to penalize the Plaintiff by dismissing his complaint with leave to amend.

C. In his interim order, Judge Bloom admitted meeting privately with the defendant attorneys without the knowledge of the Plaintiff – a breach of civil rules and procedures which prejudices the Plaintiffs case.

D. By not ordering the Defendants to answer the Plaintiffs Summons and Complaint and Subsequent Complaints or signing a Final Default Judgement in favor of the Plaintiff, Judge Bloom bought time for MARK MINTZ and KEITH TRUPMAN to further harass and tortment the Plaintiff by having Judge Jon Gordon sign an illegal summary judgement against the Plaintiff thereby inflicting more pain and suffering upon the Plaintiff. This was filed by MINTZ and TRUPMAN in a vain attempt to prevent the Plaintiff from filing criminal charges against them and the other Defendants, in this claim, all to no avail. Justice will prevail in this case when all their criminal actions come to light.

E. It is an unmistakable gross error for Judge Bloom to admit that he does not understand the Plaintiffs claim after seven months of motions and hearings in his chambers. Had he dutifully ordered the Defendants to answer the Plaintiffs Summons and Complaints, then he would have clearly understood that the Plaintiffs claim involves crime, fraud, distortion, anti-Semitism and their cover up by the Defendants. He would know that PREFERRED RISK's actions were illegal in 1977 at the time of the Plaintiffs loss as well as illegal today.

F. In the Plaintiffs transcript of the December 17, 1992 hearing, Judge Bloom erred on page 12 when asked by the Plaintiff if the Defendants have to answer the Plaintiffs Summons and Complaint. Judge Bloom responded "...unfortunately, they do not have to do that" (Lines 11-19).That answer may be true when the Judge refuses (as Judge Bloom has done for seven months) to order the Defendants to answer. How-

ever, Rule 1:110 states that the effect of failure to answer or deny is to admit. All the Defendants have been in default since the June 1, 1992 Summons and Complaint.

G. In the September 1, 1992 transcript, Judge Bloom stated that law is all about which side can get the upper hand. Perhaps that statement is a reflection of Judge Bloom's experience in the Dade County Justice System, however, our Constitutional rights are secured only by fair and impartial courts and the proper administration of written law, not word games or flimsy interpretations and acting performances. If Judge Bloom's assertion were correct, there would be little chance that private citizens could be afforded a fair trial on the merits of any claim, given the power and prestige of expensive legal firms and the expertise available only to more fortunately situated companies such as PREFERRED RISK.

H. From June 1, 1992 to October 27, 1992, Judge Bloom failed to poll the attendance of the Defendants or to acknowledge the absence of those not appearing on their own motions.

I. Judge Bloom failed to find BYRD DUKE, ROBERT KORNER, JUDGE MARIO GODERICH in default for failing to appear on their own motions to dismiss.

J. Now rather than to correct the possible oversight on the part of the court in failing to enter a Final Default Judgement against the above Defendants for failure to answer the complaint, Judge Bloom has simply rescued himself. The Plaintiff fails to understand Judge Bloom's inability to understand written documents prepared by licensed attorneys.

Sequence of Events

1. The Plaintiff, JOHN M. STEMBRIDGE, was the owner of seven (7) income-producing buildings containing nine (9) units located in Hollywood, Broward County, Florida.

2. In April 1976, the Plaintiff paid to Defendant, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. the sum of One Thousand Six Hundred and One Dollars ($1,601.00) for a three year policy that protected Plaintiffs property from wind, fire, and malicious vandalism. See Third Amended Complaint previously filed in complain.

3. One year after the purchase of such policy, in 1977, the Plaintiffs property was torched by fire and maliciously vandalized following the Plaintiff serving eviction notices upon the tenants occupying Units 1 and 2 for their anti-Semitic acts and malicious vandalism of Bill Scheib's home across from the Plaintiffs property.

4. The acts described above consisted of painting a huge Swastika on the front of Bill Scheib's home, driving an automobile through his hedge and leaving tire tracks throughout his lawn.

5. The Plaintiff herein, JOHN M. STEMBUIDGE, has been and still continues to be an ardent supporter of Israel and of Israel's right to be regathered to Zion in peace and reconciliation with her neighbors, then suffered the wrath of these tenants when they turned their anger toward him by vandalizing and torching his buildings after he served eviction notices on them for their vandalism and anti-Semitic acts against Bill Scheib. Then, the Plaintiff suffered greater loss when PREFERRED RISK denied payment.

6. Upon the filing of a claim against the Defendant PREFERRED RISK, Plaintiff was declined coverage for the above damage to his property, and was forced to seek a remedy through the filing of a lawsuit in 1980 case 80-7272CA in order to recover his loss. The reaction of the Defendant PREFERRED RISK, to the Plaintiff's claim is clearly shown in the recently found incriminating deposition of claims adjuster, in his deposition taken after the loss.

> "I immediately got on the phone, told them this was not the type of loss we wanted to insure. The agent that wrote this was only with the company a very short time. It's obviously why he was not, because the company does not insure this type of building, but naturally we were on the block we wrote the policy the agent made underwriting the apartments, because the company would have never been—this agent wrote this, was terminated, maybe as a result of this, I don't know, but he didn't stay around very long."

Instead of being concerned for its policy holder and his trauma, PREFERRED RISK thought only of itself seeking only to protect itself rather than its policy holder from 1977 to 1993. No mercy or compassion has PREFERRED RISK shown. Furthermore, the salesman who sold the Plaintiff the aforementioned policy moved out of Miami and PREFERRED RISK's agent for whom the salesman worked closed his office in North Miami and moved out of the state.

The Plaintiffs attorney, BYRD DUKE, was the first to compromise the Plaintiffs claim by illegally protecting PREFERRED RISK by refusing to order the above incriminating transcript of Westberry's deposition. The transcript only came to light recently when the Plaintiff found it among papers which had been exchanged by Defendants MINTZ and KORNER. MR. DUKE further refused to sue the above agent for errors and omissions and refused as well to sue PREFERRED RISK for its bad faith tortful actions in spite of urging from the Plaintiff and other lawyers and insurance experts in behalf of the Plaintiff in this matter. As a former Circuit Court Judge, it seems completely unlikely that BYRD DUKE can justify ignorance of the law in such matters, and baffles this Plaintiff as to the reasons for failing to properly represent his client, the Plaintiff herein. It is believed that defendant DUKE was in collusion with PREFERRED RISK, which acts inured to the detriment of the Plaintiff, and further, constitutes a grave illegal act on the part of such an attorney. The evidence is clear: PREFERRED RISK, WHETHER because of an inept salesman or any other reason, wrote and accepted payment for insurance coverage on behalf of the Plaintiff, JOHN M STEMBRIDGE, the Defendant, PREFERRED RISK, failed to comply with the provision of said policy, and thereby caused the expense, pain and suffering, and other liabilities experienced by the Plaintiff since the above acts of vandalism which robbed Plaintiff of his livelihood.

7. At the time that Plaintiff paid PREFERRED RISK the sum of one thousand Six Hundred and One ($1,601,00) dollars, the Plaintiff owned three furniture stores which grossed approximately $600,000.00 a year, was the host of a weekly "Inspirational Hour" television Concert Series. All of the above were closed or shut down between 1977 and 1980, largely due to the Plaintiffs financial adversities, all caused by the actions of PREFERRED RISK.

8. All of the above culminated in nearly sixteen years of litigation, untold expense to the Plaintiff, as well as the ongoing effort by the Plaintiff to remain in business and to recover from the loss of his property. For all of the expense and efforts of the Defendants to cover up for each other and their willingness to pay millions to protect themselves from criminal prosecution, the Plaintiff, JOHN M. STEMBRIDGE, has lost nearly $10,000,000.00 in gross revenues (not counting the revenues lost from the damaged building for which PREFERRED RISK was liable in insurance coverage).

9. PREFERRED RISK was found guilty of breach of contract and paid for its act March 1992 some fifteen (15) years after the Plaintiffs loss in 1977. Under law, the Plaintiff is now entitled to sue for compensatory damages suffered, for punitive damages for tort, and may now sue for

statutory bad faith actions of the names Defendants for collusion and conspiracy to defraud the Plaintiff.

AMENDED COMPLAINT

THIS IS AN ACTION for compensatory damages in excess of $3,000,000,00 and for punitive damages in excess of $10,000,000.00. The Plaintiff, JOHN M. STEMBRIDGE, sues the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, individually, jointly and severally and alleges.

COUNT 1

COLLUSION AND CONSPIRACY TO COMMIT FRAUD

Plaintiff re-alleges and reaffirms the above and foregoing and further alleges:

1. According to Black's Law Dictionary, the definition of collusion is stated as: "...an agreement between two or more persons to defraud a person of his rights by the forms of law or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of laws means for the accomplishment of an unlawful purpose." HAY HOSIERY MILLS v. UNITED STATES, 64 Fed,2d 150 (U.S. District Court, Montana-CCA, Mont.).

Further, "A secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceit purposes." W.E. Bowen Improvement Co. v. Van Hoffsen, 209 Mo. App. 629. 238 S.W. 147, 149, Daly v Haight, 156 NYS. 538, 541, 170 (App. Div. 169); "A secret arrangement between two or more persons whose interests are apparently conflicting to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice should not give them, by deceiving a court or its officers." Railroad Co v Gay, 86 Tex. 571, 26 S.W. 599, 25 L.R.A.52; Balch v Beach, 119 Wis. 77,95 N.W.132.

2. The Defendants conspired together to protect PREFERRED RISK from having any of its tortuous acts and/or statutory bad faith actions against the Plaintiff from being heard by an impartial panel of jurors for nearly sixteen (16) years.

3, All of the attorney Defendants had complete and comprehensive knowledge of torts and statutory law and therefore were equally liable,

as the Defendant, PREFERRED RISK, to the public trust mandate. All were knowledgeable that failure of the public trust mandate causes such insurance company to be liable in tort and subject to an award of punitive damages for such tortuous actions against a claimant.

4. In the December, 1985 hearing before Judge Goderich, on the Plaintiffs Third Amended Complaint, defendant MINTZ stated that in Florida, an insurance company can deny protection and otherwise mistreat its policy holder and only be liable for the policy amount. As a result, Defendant GODERICH, for the third time, protected PREFERRED RISK from its illegal tortful acts against the Plaintiff by striking the heart of the Plaintiffs claim. From that time until March 1987, Defendant KORNER refused to challenge Defendant MINTZ misrepresentation of the law or to challenge the Judge's ruling in spite of numerous phone calls and visits by the Plaintiff, two letters of inquiry in November 1986 and January 1987 and several inquiries personally as to why no activity by KORNER (for which the Plaintiff paid separately) from attorney Ed Winter.

5. After more than a year of pleading, on March 7, 1987 Defendant KORNER admitted verbally and in writing to the Plaintiff that he had committed malpractice against him for failing to prosecute this case for over a year in spite of all the urging and expense of the Plaintiff urging him to act. KORNER offered to pay him $40,000,00 not to sue him for malpractice. However, he failed to mention that this failure was due to his collusion with the Defendant PREFERRED RISK.

6. This is evidenced on March 12, 1987 at the Dade County Courthouse, KORNER, in concert with the attorney for PREFERRED RISK, Defendant TRUPMAN and in concert with KORNER's personal attorney, all three in collusion, threatened and intimidated the Plaintiff by telling him that if he did not sign and accept the offer of PREFERRED RISK to release PREFERRED RISK from all bad faith actions, that Judge Salman would dismiss his case the next day and that the Plaintiff would receive nothing (-0-) for his losses, pain, and suffering. This was a carefully calculated effort on the part of the Defendants to get PREFERRED RISK excused from compensatory and punitive damages owed to the Plaintiff. Further, KORNER had made himself "judgement proof." He did not have any malpractice insurance, and his real estate and other holdings were in his wife's name. Had Plaintiff succombed to the threats put before him by the Defendants, he would have been without recourse or remedy for his claim.

SAM HOLLAND, knowing all of PREFERRED RISK'a tortful actions above, upon taking the case from KORNER, chose as DUKE and KORNER previously to protect PREFERRED RISK from accounting for

its illegal bad faith tortful activities by only suing for breach of contract and not for the heart of his client's case. This is in spite of all the facts of the case and research law on punitive damages for torts and breach of contract given him by the Plaintiff JOHN M. STEMBRIDGE for which the Plaintiff paid to have done.

NEU, also being informed of PREFEREED RISK's above fraudulent actions also refused to use any of the above research law as it applied to the facts in the Plaintiffs claim in his weak appeal for the Plaintiff. Choosing to appeal only one count of emotional distress with punitive damages, NEU left out the greater heart of the Plaintiffs appeal of the counts of fraud, conversion, loss of use of property, loss of income which caused the emotional distress.

Finally, appealing the August 29,1990 decision of the Florida Supreme Court failure to take Jurisdiction , the Plaintiff heavily in debt, working to keep his last store open and trying to protect his civil and constitutional rights, commenced researching, editing, and writing his own writ of certiorari to the U.S. Supreme Court. The Plaintiff was Paying NEU to review, oversee and guide the preparation of the Plaintiffs writ. NEU in collusion with MINTZ and HOLLAND allowed the Plaintiff to file the writ (November 30, 1990), one day out of time.

The Plaintiff with his secretary met with NEU for nearly two (2) hours in NEU's office on November 30, 1990, the day the writ was filed with the U.S. Supreme Court. Not once from August 29, 1990 to November 30, 1990 did NEU caution the Plaintiff nor his secretary that November 30, 1990 would be one day out of time.

This was part of the continued orchestrated plan of cover up by the Defendants. The Plaintiffs writ of certiorari and the case law, it sites as it applies to the facts on his claims against PREFERRED RISK exposes DUKE, KORNER, HOLLAND and NEU's willful failure to apply the law to the facts of the Plaintiffs claim against PREFERRED RISK.

Knowing that the Plaintiffs case was filed one day out of time, NEU, in collusion with MINTZ and HOLLAND allowed a motion on interest by MINTZ and a motion on partial satisfaction of judgement by HOLLAND before Judge Harvey Goldstein to go forward unchallenged Dec. 14, 1990. Although phoning the Plaintiff two or three (2 or 3) times that it was unnecessary for the Plaintiff to attend that he, NEU, would represent him. NEU called November 13,1990 the afternoon before to tell the Plaintiff that he could not attend the hearing. NEU left the Plaintiff exposed to the mockery of Judge Goldstein and MINTZ as to blood money "and to the blasphemies of SAM HOLLAND to MINTZ after the hearing that he wanted this *[blankety-blank]* case off his desk." As a result if this illegal

hearing, Judge Goldstein signed an order which defrauded the Plaintiff of several thousands dollars. When the Plaintiff charged HOWARD NEU with collusion with MINTZ and HOLLAND for leaving him exposed to the verbal abuse and mockery of MINTZ, HOLLAND and Judge Goldstein, NEU filed a motion for a rehearing on the interest issue. NEU perjured himself in this motion claiming that he did not know the interest issue was to be heard. Because of their collusion with NEU, neither Judge Goldstein, MINTZ nor HOLLAND challenged NEU's untruthful statement but NEU, MINTZ and HOLLAND quietly had Judge Goldstein sign another order June 5, 1991 to reverse his previous order in an effort to cover their tracks.

In his August 14, 1992 motion to dismiss, PREFERRED RISK attorney Steven A. Edelstein made an unmistakable gross error by making a false statement when he stated "further upon information and belief, any and all actions which the Plaintiff may or may not be complaining of, took place in Dade County Florida as a consequence of which there is no basis for change of venue to Palm Beach County."

To set the record straight, the Plaintiffs property which was torched and vandalized was always located in Hollywood, Broward County, Florida. BYRD DUKE, being a former Circuit Court Judge, knowing the judges in Dade County and for his own reasons which are clear now had the case transferred from Broward County to Dade County. That was the beginning of a sixteen (16) year judicial nightmare for the Plaintiff. The Dade County, Justice System continues under a dark cloud in "Operation Court Broom." Unquestionably this case will become a bigger scandal than those in Operation Court Broom for this case exposes the sophisticated white collar crimes that seldom, if ever, come to light.

Wherefore, Plaintiff demands judgement against the above Defendants for compensatory damages in excess of $3.000.000.00 plus costs, interest and incurred attorneys fees since his loss in April 1977.

COUNT II-RICO

Plaintiff re-alleges and reaffirms the above and foregoing and further alleges:

The Plaintiff is completely baffled these sixteen (16) years by the conduct of defendant PREFERRED RISK straining at a gnat and swallowing a camel. By doing the just and right thing under law, PREFERRED RISK could have paid the Plaintiff $30,000.00 at the time of loss. Instead, it set out from the beginning on a nearly sixteen (16) year trial, involving the insurance industry as well as the other Defendants, spending unlimited sums

of money to compromise the political, legal, and judicial systems in an elaborate criminal scheme to prevent the Plaintiffs claim from setting a precedent for all the other American policy holders defrauded by the tortful statutory bad faith actions of the insurance industry.

During these sixteen (16) years, Judge Goderich who committed an unmistakable gross error when he struck the heart of the Plaintiffs claim against PREFERRED RISK in 1985 and by such act obstructed justice for the Plaintiff was rewarded for such acts by the Governor with an appointment to the Third Appellate Court.

It was to the Third Appellate Court that the Plaintiff had to appeal Judge Goderich's striking the heart of his case. Judges Backdull, Nesbitt, and Jorgenson upheld their colleague's striking the heart of the Plaintiffs claim with a per curiam ruling. This effectively prevented the Plaintiff from his constitutional right to appeal their decision to the Florida Supreme Court when they refused to write an opinion which could have been appealed. True to form the Appellate Court as the Circuit Court under Goderich protected, PREFERRED RISK from giving an account before and impartial panel of Jurors of its illegal tortful and now statutory bad faith actions against the Plaintiff.

When the Plaintiff took matters away from the lawyers and into his own hands by researching, editing, and writing his own writ of certiorari to the U.S. Supreme Court, HOWARD NEU, while being paid by the Plaintiff, made sure that it was filed one day out of time. Thereby all Defendants and courts from 1977 to 1993 have effectively protected PREFERRED RISK from its illegal actions while denying the Plaintiff his civil and constitutional rights to a trial by jury of all the facts in dispute.

1. Under rule 608, RICO Criminal Scheme, Civil Theft, Conversion, and Fraud, Plaintiff alleges that beginning in April 1977 and until the present, Defendant , PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, (hereinafter referred to as "PREFERRED RISK"), with the support of the insurance industry and in cooperation, collusion and joint conspiracy with Defendants MARK MINTZ (hereinafter "MINTZ"), KEITH TRUPMAN (hereinafter "TRUPMAN"), Judge MARIO GODERICH (hereinafter "GODERICH"), BYRD and MARIE DUKE (hereinafter "DUKE"), ROBERT and JEAN KORNER (hereinafter "KORNER"), SAM HOLLAND (hereinafter "HOLLAND") and Defendants HOWARD NEU (hereinafter "NEU"), entered into and conducted a pattern of criminal activity in violation of Florida State Section 817.232(2) and,

2. Defendant PREFERRED RISK, by spending hundreds of thousands of dollars, perhaps millions, has compromised the political, legal, and the judicial system in an elaborate scheme to defraud the Plaintiff of

his rightful property, livelihood, use of his name, mental and emotional well being, his civil and constitutional rights for nearly sixteen (16) years.

WHEREFORE, Plaintiff demands judgement against all Defendants for compensatory damages in excess of $3,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT III

OBSTRUCTION OF JUSTICE

Plaintiff reaffirms and re-alleges Counts I through II and further alleges:

1. The defendants obstructed justice by knowingly violating the constitutional rights of the Plaintiff and further violated the Plaintiffs rights by unethical conduct of an attorney licensed to practice law in any state. The Florida Bar, in its mandate, state impari muteria:

RULE 4-3:3 – CANDOR TOWARD THE TRIBUNAL, MISLEADING

Legal argument:

> "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make disinterested exposition of pertinent legal authorities. Furthermore, as stated in paragraph (1) (3), and advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal agreement is a discussion seeking to determine the legal premises properly applicable to the case."

2. Knowing this law, the rules of the Florida Bar, and the constitutional rights of American citizens to own property and the oath of its officers to protect the property and lives of its citizens, the Defendants conspired together to protect PREFERRED RISK rather than the victim/plaintiff, JOHN M. STEMBRIDGE, from having its illegal actions of fraud, conversation, civil theft, criminal scheme, collusion and conspiracy, causing the Plaintiff to lose his property, livelihood, and well being for nearly sixteen (16) years and from having his case heard by a jury.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in excess of $3,000,000.00 plus costs, interest, and incurred attorneys fees since April 1977.

COUNT VI

VIOLATION OF PLAINTIFF'S CIVIL AND CONSTITUTIONAL RIGHTS

Plaintiff reaffirms and re-alleges counts I through V and further alleges:

1. The defendants have conspired together to defraud the Plaintiff of his civil and constitutional rights for nearly sixteen (16) years; more specifically;

a) to a trial by jury of all issues in dispute;

b) to the right to have the Plaintiffs property, as well as his life protected by those sworn to uphold the Constitution;

c) to the right by the Plaintiff to the pursuit of happiness.

WHEREFORE, Plaintiff demands judgement against the defendants for compensatory damages in excess of $3,000,000.00 plus cost, interest, and incurred attorneys fees since April 1977.

COUNT VII

DEFAMATION OF CHARACTER

Plaintiff reaffirms and re-alleges Count I through VI and further alleges:

All the above named Defendants have made unmistakable gross errors in their improper handling of Plaintiffs losses, which have humiliated, defamed and severely injured the Plaintiff.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in excess of $3,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT VIII

BREACH OF CONTRACT

Plaintiff reaffirms and re-alleges Counts I through VII and further alleges:

The Plaintiffs attorneys have breached their oath as attorneys to represent the oppressed and helpless by failing to represent the Plaintiffs right to a full recovery of compensatory and punitive damages according to the law of the land and the facts of the case and have breached their contract with the Plaintiff by the collusion and conspiracy with each other.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in excess of $3,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT IX

MALPRACTICE

Plaintiff reaffirms and re-alleges Counts I through VIII and further alleges:

Defendants DUKE, KORNER, HOLLAND and NEU, in conspiracy with defendants MINTZ, TRUPMAN, GODERICH and PREFERRED RISK, have committed malpractice against the Plaintiff by their calculated improper handling of his just claim against PREFERRED RISK and his right to full recovery for his damages according to law.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in excess of $3,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT X

PUNITIVE DAMAGES

Plaintiff reaffirms and re-alleges Counts I through IX above and further alleges:

1. In 1976, the year that Plaintiff paid to PREFERRED RISK the sum of One Thousand Six Hundred and One ($1,601.00) dollars for protection against wind, fire, malicious vandalism and one year before his loss Florida was considered to be a jurisdiction which imposed a covenant of good faith and fair dealing in all insurance contracts. In Escambia Treating Co v Aetna Casualty & Surety Co. 421 F. Supp., 1367 (N.D. Fla., 1976), it was explicitly held that under Florida law, an insurer has the implied duty to proceed in good faith and deal fairly with its insured.

Contrary to Judge Bloom, Judge Goderich and the Appellate Courts, who put more emphasis on the forms of the pleadings, rather than on the merits of the case and the law, the above court ruled that the nature of the grievance should be the deciding factor rather than the form of the pleadings, by citing:

> "The nature of the grievance rather than the form of the pleading should be the deciding factor in whether or not the cause sounds ex delicto or ex contractu." Burton v Juzwik, 521 p.2d 16,22 (Okla 1974).

Here, a Federal District Court in Florida acknowledged, the same year (1976) that PREFERRED RISK sold the Plaintiff the protection policy and one year before the Plaintiffs loss, that the implied duty under Florida law of an insurance company to proceed in good faith and deal fairly with its insured, and held that a bad faith breach of that duty imposed liability in tort . Certainly, the judges on the Circuit and Appellate Courts, as well as all lawyers coming before such court, had knowledge of such an important ruling. Therefore, all are without excuse. Perhaps that is why they could not (or dared) answer or deny the Plaintiffs June 1, 1992 Summons and Complaint and Amended Complaint – for fear of committing perjury. Judge Bloom was in error for unilaterally protecting the Defendants by not signing a Final Default Judgment in favor of Plaintiff.

2. Three years before the Plaintiffs loss, in Campbell v Government Employees Insurance Co., 306 So.2d, s25 (Fla. 1974), the Florida Supreme Court adopted the more liberal rule. Because the insurer's conduct involved concealment and misrepresentation amounting to a "continued course of dishonest dealing", the defendant was subject to liability for punitive damages. The conduct included misrepresenting the seriousness of a claim and failure even to consider counter-offers. Id. At 532. The court's opinion reflected a definite change in attitude toward punitive damages which "are no longer looked upon as monstrous." Instead, the court noted that such damages have "helped to maintain public tranquility by permitting the wronged Plaintiff to take his revenge in the courtroom and not by self help. Since compensatory damages do not fully compensate, punitive damages have a general salutary effect" and are rewarded to the insured party as a reward for his public service in bringing the wrongdoer to court." See Plaintiffs Writ of Certiorari –U.S. Supreme Court, as well as Nova University Law Professor Phyllis Coleman's research on punitive damages in Florida – case law (previously filed in this case # 92-13319.)

3. All the defendants in this case, being attorneys, and certified by the Florida Bar, ultimately chose to obstruct justice by violating their oath as attorneys in order to protect defendant PREFERRED RISK, which acts inured to the detriment of the Plaintiff, STEMBRIDGE in violation of his civil and constitutional rights. Said defendants failed to cite any of these cases in their presentation to the courts nor any of the many other cases cited by the Plaintiff in his Writ of Certiorari filed in this case. Rather, these defendants chose to cover up the illegal actions of PREFERRED RISK instead of protecting the rights of their client, STEMBRIDGE. As a result, Plaintiff has suffered grave harm and injustice at the hands of his own counsel, and for these acts, Plaintiff demands judgement for punitive damages.

WHEREFORE, Plaintiff demands judgement against all defendants for punitive damages in excess of $10,000,000.00 plus costs, interest and incurred attorney fees since April 1977.

SUMMATION

1. Whereas the Eleventh Circuit Court in Dade County, Florida has been unable since June 1, 1992 to understand or comprehend the Plaintiffs just claim in this case after eight months of motions and hearing and,

2. Whereas the Eleventh Circuit Court in this case has been unilaterally partial and protective of the Defendants by:

a) Judge Bloom, failing to order a change of venue and trial by jury.

b) Judge Bloom, illegally meeting with the defendants privately without the knowledge of the Plaintiff to the detriment of the Plaintiff.

c) Judge Bloom, Illegally refusing to order the defendants to answer the Plaintiffs just Summons and Complaint since June 1, 1992 as the Plaintiff had motioned.

d) Judge Bloom, illegally refusing to sign a final default Judgement in favor of the Plaintiff upon the refusal of the defendants to answer in writing or verbally in the Judge's chambers, the Plaintiffs June 1, 1992 Summons and Complaint as the Plaintiff had motioned.

e) Judge Bloom, illegally refusing to sign a final Default Judgement in favor of the Plaintiff for failure of BYRD DUKE, ROBERT KORNER, and Judge Goderich to appear on their own motions to dismiss as the Plaintiff had motioned.

3. Whereas the Circuit and Appellate Courts in Dade County are guilty of obstructing justice for the Plaintiff since 1977 to the present by denying the Plaintiffs Constitutional benefits and rights to a jury trial of all the issues in dispute in his just claim against PREFERRED RISK MUTUAL INSURANCE COMPANY OF IOWA, INC.

4. Whereas the judicial System in Dade County continues under a cloud in "Operation Court Broom"

5. Wherefore, due to the outrageous and heinous conduct of the defendants nearly sixteen (16) years of injustice, torture and abuse of the Plaintiff by the Judicial System in Dade County Florida, the Plaintiff motions for a Final Default Judgement in favor to the Plaintiff against all the defendants individually, severally and jointly for compensatory damages of $3,000,000.00 plus cost, attorney fees, and interest since April 1977 on each count and for punitive damages in excess of $10,000,000,.00 plus cost, attorney fees, and interest since April 1997.

"s/ John M. Stembridge"
Plaintiff, John M. Stembridge

DATE: 2/16/93

"s/ Sandra Lee Asbury"
Notary
NOTARY PUBLIC; STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES December 18, 1993
BONDED THRU HUCKLEBERRY & ASSOCIATES

MAILING LIST

Honorable Margarita Esquiroz
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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

CASE NO. 80-7272-CA-20

JOHN M. STEMBRIDGE :
Plaintiff, :
vs. : THIRD AMENDED COMPLAINT
PREFERRED RISK MUTUAL :
INSURANCE COMPANY, :
Defendant. :
:

Plaintiff, JOHN M. STEMBRIDGE, sues Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, and alleges:

1. This is an action for damages that exceeding $2,500.00

2.Plaintiff is resident of the City of North Miami, Florida and was at all times material herein mentioned the owner of certain real property described as nine family apartments located at 2233 Pierce Street, Hollywood, Fl.

3. Defendant is a foreign corporation duly authorized to do general insurance business in the State of Florida.

4. In and by its certain Standard Fire Insurance Policy, No. 1-416-?[can't read number], a copy of which is attached as Exhibit "A:, duly executed and delivered to Plaintiff at 14923 N.W. 7th Avenue, Miami, Dade Country, Florida on approximately April 1, 1976, Defendant in consideration of the sum of $537.00 per year for three years on annual deferred premium pay plan which had been paid to it by Plaintiff for April, 1976 and April, 1977, insured Plaintiff against all direct loss or damage by fire, extended coverage and/or vandalism and mischievous to an amount not exceeding $30,000.00 on Plaintiff's real property located at 2233 Pierce Street, Hollywood, Florida, consisting of one story, seven buildings arranged into nine apartments.

5. At all times herein mentioned, Plaintiff was the owner of the above described premises.

6. Home Federal Savings and Loan Association, loan number 3510, has been paid in full, and it has satisfied the mortgage encumbering said property.

7. In and by said policy, Defendant agreed to make good to Plaintiff all such loss and damages, not exceeding $30,.000.00 as should be caused to said property by fire, extended coverage, vandalism and mischievous mischief from April 1, 1976 to April 1, 1979 to be paid by Defendant within sixty (60) days after proof of loss were received by the Defendant.

On or about May 3, 1977; May 21, 1977; June 6, 1977 and June 20, 1977 while said policy was in full force and effect, said property insured was while located and contained in accordance with provisions of said policy, damaged and/or destroyed, said fires and vandalism and mischievous mischief did not occur from any one of the excepted clauses in said policy.

8. The true and actual value of said property so damaged and destroyed was t least the sum of $57,096.00

9. Plaintiff duly gave oral and written notice of loss within sixty (60) days and the Defendant had due notice of said loss and sent its adjuster, Paul Westberry to inspect the property and to determine Plaintiff's loss. Proof of loss form furnished Plaintiff was for damage to automobile.

10. Plaintiff duly gave sworn statements in proof of loss dated June 21, 1978 a copy is attached as Exhibit "B", which wee then received and have since been retained by the defendant without action. More than sixty (60) days have elapsed since receipt by the Defendant of due notice, ascertained, estimate and satisfactory proof of loss in accordance with the terms and conditions of said policy.

11. Defendant has paid to Plaintiff no part of said sum of $30,000.00

12. That on January 29, 1980 pursuant to line 123-140 of said policy, Plaintiff's attorney designated Robert C. Birmelin, Esquire as appraiser and Defendant by failing to appoint an appraiser has waived appraisal.

13. The Defendant did not at anytime advise the Plaintiff that his method of evaluating the Plaintiff's loss would result in a determination of value materially different than the amount of $30,000.00 set forth in the policy, which amount Defendant knew Plaintiff reasonably believed to be the amount which would be paid if damages equaled or exceeded that amount.

COUNT I

Plaintiff realleges all of the foregoing and further alleges:

14. As a result of the course of dealings between the Plaintiff and the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY the reasonable expectations of the Plaintiff was that coverage provided by the

Defendant would be $30,.000.00 or an amount not materially different from said amount.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, for damages in excess of $2,500.00 plus costs, interest and attorney's fees.

COUNT II

Plaintiff realleges all of the foregoing and further alleges:

15. Subsequent to the loss to the Plaintiff's property, which was insured by the Defendant, the Plaintiff duly notified the Defendant and attempted to obtain payment for said losses.

16. Notwithstanding the reasonable expectations of the Plaintiff that he was entitled to $30,000.00 for loss of property, Paul Westberry while acting within the course and scope of his authority as an employee and/or agent of the defendant, offered to settle Plaintiff's losses for an amount of $9,000.00 or 12,000.00. Each amount was given at the same time within a single telephone conversation. No reason was given for the different amounts.

17. During the course of settlement negotiations with the Defendant's agent, Paul Westberry, while acting within the scope and course of his employment with the Defendant, wrongfully accused the Plaintiff of false representation, used abusive language in a manner that conveyed his amusement with the situation Plaintiff found himself in, and was rude, callous, and inattentive to Plaintiff.

18. Over a two year period, Paul Westberry continuously harassed Plaintiff by blaming him for the arson and insinuated Plaintiff was the culprit who had planned and committed the vandalism that resulted in the loss of the buildings; these remarks did not cease even after the actual culprit was apprehended and convicted.

19. The conduct of Paul Westberry, while acting within the scope and course of his employment, has caused the Plaintiff continuous humiliation and embarrassment, has caused him to become extremely nervous and upset, and has had profound effect on his mental well-being.

20. Throughout the course of settlement negotiations, Paul Westberry, while acting within the scope and course of Defendant's employment, was repeatedly difficult to contact and willfully and deliberately acted in a manner to cause delay.

21. Defendant failed to handle the Plaintiff's claim with the requisite dispatch and due diligence, instead delaying the settlement process by failing to advise the Plaintiff of his rights under the policy and under the laws of the state, by failing to give complete information concerning Defen-

dant's claims procedure and by failing to make a complete investigation of the Plaintiff's claim because of its failure to contact persons having first-hand knowledge of the condition of the property and the applicable code provisions thereto.

22. Being well aware of the Plaintiff's financial instability as a result of the property loss, the tortious conduct of the Defendant's agent was designed to pressure Plaintiff into settling for an amount substantially less than what the policy entitled the Plaintiff to receive.

23. The conduct of the Defendant's agent was willful, wanton, malicious, deliberate and calculated to cause the reactions aforesaid.

24. On numerous occasions, PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees, engaged in active misrepresentation of the terms, coverage and effect of the insurance policy, for the purpose and with the intent of effecting settlement on less favorable terms than those provided in and contemplated by the policy, in that:

a. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, misrepresented the amount of damage experienced.

b. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, did not follow the policy terms in computing the amount which the property was worth at the time of the casualty.

c. Defendant, PREFERRED RISK MUTUAL INSTRURANCE COMPANY, did not follow the policy terms in making the offers of $9,000.00 to $12,000.00 and did INSURANCE pay or offer to pay the sum for which the premium has been charged.

d. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, utilized its premium rate structure and schedules to charge premium based on the value of the property in excess of the amount the Defendant ever intended to pay in the event of a loss; by such acts, PREFERRED RISK MUTUAL INSURANCE COMPANY misappropriated sums of money belonging to the Plaintiff, converted these sums to the improper and illegal use and benefit of the Defendant.

25. PREFERRED RISK MUTUAL INSURANCE COMPANY in making the misrepresentations referred to above, knew or would have known that they were false and acted with the intent to deceive the Plaintiff into settling for an amount substantially less than what he was entitled to.

26. Plaintiff justifiably relied on the representations made to him by the Defendant's agents and as a result thereof was unjustly damaged to the extent of financial insolvency.

27. The conduct of PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees was deliberate and calculated to cause the damages and reactions aforesaid.

28. The course of settlement negotiations between the Plaintiff and Defendant unnecessarily extended over a period of approximately two years through no fault of the Plaintiff but rather as a result of deliberate delays caused by Defendant, intended to compel Plaintiff into an agreement far below the sum for which the premium had been charged.

29. Throughout the two year period, Defendant has deliberately and intentionally acted contrary to the best interests of the Plaintiff as a member of the insuring public and has wronged society by violating the public trust vested in it as a licensed insurer in the State of Florida.

30. The aforesaid conduct on the part of Paul Westberry, while acting within the scope and course of his employment with the Defendant, amounted to highhandedness and fraudulently attempting to wrongfully induce the Plaintiff into settlement. Such conduct was of a nature especially calculated to cause severe emotional distress to the Plaintiff, was communicated in such a manner as to reasonably imply malice and was done intentionally or in reckless and total disregard for the rights of the Plaintiff and was designed to intimidate, distress, oppress, or otherwise wrongfully induce or coerce the Plaintiff into settlement at a fraction of what Plaintiff was entitled to receive and to cause emotional distress to this Plaintiff.

31. As a result of the foregoing, the Defendant is guilty of fraud and intentional infliction of mental distress, which conduct was intended and did cause the Plaintiff to suffer considerable and sever emotional distress and concern.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, for compensatory damages in excess of $2,500, plus costs, interest and attorney's fees and punitive damages in an amount in excess of $2,500.00.

COUNT II

Plaintiff realleges all of the foregoing and further alleges:

32. The Plaintiff has suffered the loss of use of his property or a portion of his property and the rents it would have produced as a result of Defendant's various wrongful acts and breaches described herein.

33. As a further result of the conduct and actions of the Defendant described herein, the Defendant is guilty of breach of contract of insurance

with the Plaintiff, and the Plaintiff has hired attorneys to represent his interest and has incurred attorney's fees and cost in the prosecution of this action.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE demands judgment for damages in excess of $2,500.00, plus costs, interest and attorney's fees against the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, a foreign corporation for loss of use of property.

COUNT IV

Plaintiff realleges all of the foregoing and further alleges:

34. PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees, made or issued, or caused to be made or issued, certain statements misrepresenting the terms of the policy issued and misrepresenting ;the benefits or advantages promised by the policy, in that:

a. PREFERRED RISK MUTUAL INSURANCE COMPANY'S employees or agents told the Plaintiff that the property was insured for $30,000.00 in the event anything should happen to the property.

b. During the entire time the policy was in force, PREFERRED RISK MUTUAL INSURANCE COMPANY assessed the Plaintiff's premiums based on the same insured value as that established in the initial policy, namely $30,000.00. PREFERRED RISK MUTUAL INSURANCE COMPANY thus affirmatively misrepresented to the Plaintiff the amount PREFERRED RISK MUTUAL INSURANCE COMPANY intended to pay in the event a covered loss were to occur.

35. In adjusting the Plaintiff's claim for the property damage loss, Defendant's employees and agents also misrepresented the terms, coverage and effect of the insurance policy, for the purpose and with the intent of effecting settlement of the Plaintiff's claim under; their PREFERRED RISK MUTUAL INSURANCE COMPANY policy on less favorable terms than those provided in and contemplated by the policy, in that:

a. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, misrepresented the amount of damage experienced.

b. Defendant, PREFERRED RISK MUTUAL COMPANY, did not follow the policy terms in computing the amount which the property was worth at the time of the casualty.

c. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, did not follow the policy terms in making the offers of $9,000 to $12,000 and did not pay or offer to pay

the sum for which the premium have been charged.

36. PREFERRED RISK MUTUAL INSURANCE COMPANY, in making the misrepresentations referred to above, knew or should have known that the Plaintiff would rely on those statements made.

37. Plaintiff justifiably relied on the representations made to him by the agents and employees of PREFERRED RISK MUTUAL INSURANCE COMPANY; the Plaintiff was damaged as a result.

38. The misrepresentations made by the agents and employees of defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, constitute a violation of Chapter 626, Florida Statutes.

39. In addition tot he foregoing, Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, deliberately and intentional acted contrary to the best interest of the Plaintiff as a member of the insuring public and violated the public trust vested in PREFERRED RISK MUTUAL INSURANCE COMPANY as a licensed insurer in the State of Florida in that:

a. PREFERRED RISK MUTUAL knew or should have known its adjusters would fail to advise the Plaintiff of his rights in accordance with the terms and conditions of the contract of the applicable laws of the State of Florida, as set forth in more detail above.

b. PREFERRED RISK MUTUAL INSURANCE COMPANY, in adjusting the Plaintiff's claims, failed to approach the investigation, adjustment and settlement of the Plaintiff's claim with an unprejudiced and open mind, as required by the Code of Ethics for Insurance Adjusters.

c. PREFERRED RISK MUTUAL INSURANCE COMPANY, acting through its agents and employees, failed to make truthful and unbiased reports of the facts found after making a complete investigation; in fact Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, never did make a complete investigation of the Plaintiff's claim because of its failure to contact persons having first-hand knowledge of the condition of the property and the applicable code provisions pertaining thereto.

d. Defendant PREFERRED RISK MUTUAL INSURANCE COMPANY failed to handle the Plaintiff's adjustment and settlement with the honesty and integrity required by the Code of Ethics for Insurance Adjusters.

e. Defendant PREFERRED RISK MUTUAL INSURANCE COMPANY, failed to handle the Plaintiff's claim with the requisite dispatch and due diligence, and instead delayed

the settlement process by failing to completely advise the Plaintiff of his rights under the policy and under the laws of the State of Florida, by failing to give complete information as to PREFERRED RISK MUTUAL INSURANCE COMPANY'S claim procedure and the information needed before a complete evaluation of the damage to the property would be undertaken.

40. This conduct by Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY constitutes a violation of Chapter 626 Florida Statutes, and also violates the Code of Ethics for Insurance Adjusters, promulgated by the Department of Insurance as part of the rules of the Department of Insurance.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, for damages in excess of $2,500.00 and for punitive damages in excess of $2,500.00 Plaintiff also demands judgment against PREFERRED RISK MUTUAL INSURANCE COMPANY FOR COSTS, INTEREST AND ATTORNEYS' FEES.

COUNT V

Plaintiff realleges all of the foregoing and further alleges:

41. PREFERRED RISK MUTUAL INSURANCE COMPANY, and persons acting at the direction of and on behalf of PREFERRED RISK MUTUAL INSURANCE COMPANY, utilized its premium rate structure and schedules to charge premiums based on the value of the property in excess of the amount PREFERRED RISK MUTUAL INSURANCE COMPANY ever intended to pay in the event of a loss; by such acts, PREFERRED RISK MUTUAL INSURANCE COMPANY misappropriated sums of money belonging to the Plaintiff and converted these sums to the improper and illegal use and benefits of the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY.

a. The sums of money referred to above constitute property of value, including rights, privileges, interest and claims of the Plaintiff in such property.

b. PREFERRED RISK MUTUAL INSURANCE COMPANY and persons acting at the direction of and on behalf of PREFERRED RISK MUTUAL INSURANCE COMPANY, obtained or used the Plaintiff's property:

1) By taking or exercising control over such property through the use of rate schedules relied on to compute premiums based on amounts in excess of any amount PREFERRED

RISK MUTUAL INSURANCE COMPANY ever intended to pay;

2) By making unauthorized and improper use, disposition or transfer of such property;

3) By stealing, larceny, purloining, abstracting, embezzlement, misapplication, conversion or obtaining property by false pretenses, fraud or deception; or

4) Other conduct similar in nature, with the intent to deprive the Plaintiff of the right to the property and with the intent to appropriate the property to PREFERRED RISK MUTUAL INSURANCE COMPANY'S use and benefit or to the use and benefit of a person not entitled thereto.

c. As a result of PREFERRED RISK MUTUAL INSURANCE COMPANY'S conduct, Plaintiff retained attorneys and is obligated to pay said attorneys a reasonable fee for their services, and has been caused to spend or incur obligations for expenses and costs of investigation and litigation.

42. This misappropriation by Defendant, PREFERRED RISK MUTUAL of certain sums of money belonging to the Plaintiff constitutes a violation of Chapter 812, Florida Statutes.

43. Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, is liable to the Plaintiff for threefold the actual damages caused by the conduct set forth in the prior paragraphs, together with Plaintiff's attorney's fees and costs of investigation and litigation.

WHEREFORE, Plaintiff, JOHN M. STEMBRIDGE, demands judgment against Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, in an amount in excess of $2,5000.00 together with the costs of investigation, litigation and attorney's fees. Plaintiff also demands trial by jury of all issues so triable as of right.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Third Amended Complaint was mailed this 8th day of August, 1985 to MARK J. MINTZ, ESQUIRE, LAW OFFICES OF RESS, GOMEZ, ROSENBERG & HOUSLAND, P.A. Attorneys for Defendant, 1700 San Souci Boulevard, North Miami, Florida 33181.

LAW OFFICE OF ROBERT D. KORNER
Attorney for Plaintiff
4790 Tamiami Trail (305) 446-3587
Coral Gables, Florida 33134

By _____
ROBERT D. KORNER

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

		IN THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT JANUARY TERM, A.D. 1995
JOHN M. STEMBRIDGE	**	
Appellant	**	
Vs.	**	CASE NO. 93-120
MARK M. MINTZ	**	
Appellee	**	

Opinion filed March 22, 1995.

An appeal from a non-final order of the Circuit Court for Dade County, Jon I. Gordon, Judge.

Rubin, Rubin & Rubin, and Eric J. Miller, for appellant.

Ress, Mintz & Truppman and Keith A. Truppman, for appellee.

Before HUBBART, COPE and LEVY, JJ.

COPE, Judge

Defendant-appellant John M. Stembridge appeals a partial summary judgment on liability in favor of plaintiff-appellee Mark M. Mintz. We reverse.

In 1980 Stembridge was the plaintiff in an action against his insurance company following a fire in a building owned by Stembridge (the "Insurance Action"). Mark J. Mintz was counsel for the insurance company. Although the verdict in that case was in Stembridge's favor, he was unhappy with the result and appealed the matter to this court, which affirmed the judgment. Stembridge v. preferred Risk, 563 So. 2d 646 (Fla. 3d DCA) (table), review dismissed, 569 So. 2d 1281 (Fla. 1990).

Subsequently, still unhappy with the results of the Insurance Action, Stembridge filed a form with the Florida Bar entitled "Inquiry/Complaint Form" ("Bar Inquiry").[1] In the Bar Inquiry Stembridge set forth the facts of the Insurance Action and the nature of certain proceedings in that case. He asked whether certain arguments made by Mintz in the Insurance Ac-

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1 Stembridge has consistently taken the position that he filed an inquiry, not a complaint. The Bar's response indicates that the Bar treated it as a complaint.

tion "gave rise to any problems as they relate to the rules regulating the Florida Bar . . . ." The Florida Bar responded.

> "Having reviewed the entire grievance file, please be advised that your complaint does not evidence that the accused attorney has acted unethically or in violation of the Rules Regulating The Florida Bar. Accordingly, I have close your file in this matter."

Mintz then sued Stembridge for defamation based on the Bar Inquiry form. Mintz did not make any claim of defamation with respect to the Bar Inquiry form which Stembridge sent to the Florida Bar. However, on the Bar Inquiry form Stembridge showed that he sent copies to several third parties, namely

(1) Stembridge's former attorneys who represented him in the Insurance Action;

(2) Mintz law partner who, along with Mintz, represented the insurance company in the Insurance Action, and

(3) several governmental agencies. [2] Mintz alleged that he was defamed by the copies which were sent to the other attorneys and the governmental agencies.[3]

Mintz moved for summary judgment as to liability based on Stembridge's failure to respond to requests for admission, arguing that the matters set forth therein — including that the Bar Inquiry form had been filed and that it was not privileged — had been admitted. Stembridge acted as his own counsel in this matter below. In substance he argued that the Bar Inquiry form was not libelous, that it set forth his own opinion, and that his statements were privileged/ The trial court granted Mintz's motion, expressly stating that it was doing so based on Stembridge's failure to respond to the requests for admission. Stembridge has appealed nd we reverse.

Procedurally, we believe that the rule in Sher v. Liberty Mutual Insurance Co., 557 So 2d 638 (Fla. 3d DCA 1990) indicates that entry of summary judgment based solely on Stembridge's failure to respond to requests for admission was inappropriate. As set forth in Sher, "[t]rial courts are required to look beyond the pleadings to determine the propriety of entering

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2 The governmental offices were the Office of the Governor, the Insurance Commissioner, the Attorneys General of the State of Florida and the United States, and the FBI.

3 Stembridge also sent a copy to Mintz himself. Mintz makes no complaint about the copy he received personally. Defamation requires publication "to one other than the person defamed." American Ideal Management, Inc. v. Dale Village, Inc., 567 So. 2d 497, 498 (Fla. 4th DCA 1990) (citation omitted).

summary judgment. Here, the record is replete with evidence contradicting the admissions created by (defendant's) failure to file a timely response." 557 So. 2d at 639 (citation omitted). Given Stembridge's sworn answers to interrogatories and sworn answer to the complaint, there remained disputed issues of material fact which precluded entry of summary judgment.[4]

On the merits we agree with Stembridge's argument that the content of the Bar Inquiry form was a nonactionable statement of opinion.

Section 566 of the Restatement (Second) of Torts provides:

> A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

In Eastern Air lines, Inc. v. Gellert, 438 So. 2d 923 (Fla. 3d DCA 1983), this court followed section 566 and summarized the applicable principles:

> (S)tatements of pure opinion cannot constitute actionable defamation. However, a statement that although ostensibly in the form of an opinion "implies the allegation of undisclosed defamatory facts as the basis for the opinion,: Restatement (Second) of Torts[5] 566 (1977), is actionable. The difference between the former, unactionable, pure opinion and the latter, sometimes called "mixed opinion," is that:
>
> > "Pure opinion occurs when the defendant makes a comment or opinion based on facts which are set forth in the article or which are set forth in the article or which are otherwise known or available to the reader or listener as a member of the public. Mixed expression of opinion occurs when an opinion or comment is made which is based upon facts regarding the plaintiff or his conduct that have not been stated in the article or assumed to exist by the parties to the communication."

From V. Tallahassee Democrat, Inc., 400 So. 2d 52, 57 (Fla. 1st DCA 1981) [, review denied, 412 So. 2d 465 (Fla. 1982)].

> It is the court's function to determine from the context "whether an expression of opinion is capable of bearing a defamatory meaning be-

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4 It appears that the failure to file a response to the request for admissions was a result of misunderstanding by the pro se litigant. The trial court entered an order requiring Stembridge to file an answer to the complaint and request for admissions within ten days. Within five days, Stembridge filed a sworn answer and sworn answers to interrogatories. Stembridge recited that his filing was made in response to the court's order.

5 We follow section 566 of the Restatement as a matter of state law.

> cause it may reasonably be understood to imply the assertion of undisclosed facts that justify the expressed opinion about the plaintiff or his conduct . . . ." Restatement (Second) of Torts § 566, comment c. If (defendant's statement would likely be reasonably understood by ordinary persons as a statement of an undisclosed existing defamatory fact, then it was properly the jury's function to determine whether a defamatory meaning was attributed to it by recipients of the communication . . . .

438 So. 2d at 927 (citation ommitted);[5] See Zambrano v. Devanesan, 484 So. 603 (Fla. 4th DCA), review denied, 494 So. 2nd 1150 (Fla. 1986); Madsen v. Buie, 454 So. 2d 727 (Fla. 1st DCA 1984); Hay v. Independent Newspapers, Inc., 450 So. 2d 293 (Fla. 2d DCA 1984); Smith v. Taylor County Publishing Co., 443 So. 2d 1042 (Fla. 1st DCA 1983); Coleman v. Collins, 384 So. 2d 229 (Fla. 5th DCA 1980); Palm Beach Newspapers, Inc. v. Early, 334 So. 2d 50 (Fla. 4th DCA 1976), cert. denied, 354 So. 2d 351 (Fla 1977), 439 U.S. 910 (1978). See generally Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) (analyzing First Amendment principles); Florida Medical Center, Inc. v. New York Post Co., 568 So. 2d 454 (Fla. 4th DCA 1990), review denied, 581 So. 2d 1309 (Fla. 1991).

In this case Stembridge's Bar Inquiry set forth the background facts about the Insurance Action. Stembridge stated that in the Insurance Action his counsel had filed several tort counts against his insurance company. Stembridge then summarized certain arguments made by Mintz at a hearing in 1985 in support of the insurance company's successful motion to dismiss the tort counts. Mintz nowhere disputes that he made the arguments attributed to him.

Stembridge went on in the Bar Inquiry for five typewritten pages to summarize, and quote from, various judicial decisions having to do with the duty of an insurance company to its insured. Based on those reported decisions on Florida law, Stembridge asserted that Mintz misquoted Florida law at the hearing. We inquired in substance whether the described "circumstances give rise to any problems as they relate to the rules regulating the Florida Bar, its Code, or Canons of Professional Ethics."

When the Bar Inquiry form is read in its full context, it is clear that Stembridge has expressed a pure opinion, the basis for which is fully disclose din the Bar Inquiry form. In our view the Bar Inquiry form, when read as a whole, cannot be reasonably interpreted to imply" the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts § 566.

As stated in Zambrano v. Devanesan, "The determination whether a statement is fact or opinion is a question of law for resolution by the court.

Moreover, and appellate court may make the determination of opinion versus fact on review." 484 So./ 2d at 606 (citation omitted; emphasis added). We conclude that the Bar Inquiry form was nonactionable pure opinion. That being so, the partial summary judgment in favor of plaintiff Mintz is reversed. On remand, the trial court shall enter judgment in favor of defendant Stembridge on the defamation complaint.

One other point bears comment. In the factual statement we have noted the trial court ruling that there was no qualified privilege for the copies of the Bar Inquiry form which Stembridge sent to the attorneys who participated in the Insurance Action.[6] By his second point on appeal Stembridge contends that the trial court erred by overruling the claim of qualified privilege. Since Stembridge is entitled to entry of judgment on other grounds, we need not reach the privilege issue. Although we leave open the question of qualified privilege, we note that Stembridge's position on this issue is a substantial one.[7]

For the reasons previously stated, the order under review is reversed and the cause remanded with directions to enter judgment in favor of Stembridge on the defamation complaint.

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6 The trial court found that there was a qualified privilege for the copies which Stembridge sent to governmental agencies. Mintz has not challenged that ruling here.

7 The Florida law of qualified privilege is set forth in Nodar v. Galbreath, 462 So. 2d 803 (Fla. 1984). See also Leonard v. Wilson, 150 Fla. 503, 509, 8 9o 2d 12, 14 (1942); Boehm v. American Bankers Ins. Group, Inc., 557 So. 2d 91 (Fla. 3D DCA), review denied, 564 So. 2d 1085 (Fla. 1990).

Where a Bar complaint arises out of a lawsuit, we are inclined to think that there is a qualified privilege to give copies of the Bar complaint form to those who participated kin the underlying lawsuit. Even if that were not so, assuredly a former client has at least a qualified privilege to communicate with his former lawyers about a matter relating to the prior representation. Most of the individuals who received copies were Stembridge's former lawyers.

The last copy was sent to Mintz's partnet. Nodar holds that there is a qualified privilege to complain to an employer about the performance of an employee. 462 So. 2d at 809. Certainly a person who files a Bar complaint about a lawyer has a qualified privilege to inform the lawyer's law firm. The law firm has an important interest in knowing of the filing of a Bar complain about one of its attorneys, and there is a public interest in the free flow of such information to the law firm so that corrective action can be taken in those cases where the complaint is well founded.

Florida Bar

Gentlemen,

RE: PLAINTIFF's third amended complaint plus this:

Please add addendum to my formal inquiry filed May 3, 1991 with you in the case JOHN M. STEMBRIDGE v. PREFERRED RISK MUTUAL INSURANCE CO. Case # 80-7272 CA20

As recently as December 14, 1990 after a hearing on this case before Judge Harvey Goldstein, Mr. Mintz told me that there was no legal basis for my claim beyond breach of contract in response to one of my questions.

With my formal inquiry to you, I need to know whether Mr. Mintz and his client or the courts which I have cited are correct.

1. Can an insurance company, charging highly escalated premiums for its protection, refuse to repair one's property when loss occurs?

2. By that refusal, cause one to lose that property by turning not only its head but also its heart from you calamity?

3. Cause one to lose the income from those units for all these years.

4. Otherwise mock and insult its policy holder and never have to give an account of its actions before an impartial Jury as our Constitution and Jury System requires?

5. When the insurance industry is licensed to operate as a Public Trust, who is to enforce those statutes and codes upon this industry, if not our courts?

6. One year before the loss, the Defendant inspected the Plaintiff's property and issued its policy. The name of the company is "Preferred Risk", which means that it only insures property that is a preferred risk.

One year after charging highly escalated premiums for a small amount of protection, can that comp[any totally turn its back upon its policy holder and never have to give an account for its actions before an impartial, panel of jurors as did the Plaintiff in the 1987 trial for breach of contract?

Justice must be fair to both parties. So far, the Defendant has been protected and not the victim of the injustice.

Even after those responsible for the malicious vandalism and fire were apprehended and convicted in court, this did not change the head nor the heart of the Defendant.

The Plaintiff has had to bear the brunt and severity of all the above without so much as one kind word, much less one cent, from the Defendant for over fourteen years.

Needless to say, the Plaintiff has more respect for the Priest and Levite who turned their backs on the one beaten and left for dead by the robbers in the parable of the Good Samaritan, than for the Defendant. For they were not being paid to protect that man as the Defendant was being paid to protect the Plaintiff.

Sincerely,

John Stembridge

(STAMPED)
THE ORIGINAL FILED
ON NOV 03 1992
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CASE # 92-06342 CA 05

MARK J. MINTZ
PLAINTIFF,
VS.
JOHN M. STEMBRIDGE, PRO SE
DEFENDANT.

ANSWERS TO COMPLAINT AND AND INTERROGATORIES AND JUDICIAL NOTICE

It is a reservation of the opinion of the Defendant John Stembridge that Judge Jon I. Gordon erred by ordering the Defendant John Stembridge to file answers to Mr. Mintz improper complaint and interrogatories rather than dismissing the same for reasons stated in the Defendant's September 24,1992 and October 29, 1992 motions to strike and dismiss.

Mr. Mintz also made and unmistakable gross error in his complaint and interrogatories in this case.

1. Defendant Mr. Stembridge filed an inquiry concerning Mr. Mintz's actions in this case – not a Bar complaint.
2. Several times in the filing to the Florida Bar the Defendant Mr. John Stembridge stated, " I am filing this formal inquiry."
3. There is a big difference between the meanings of Inquiry and complaint.
    a. Inquire – to seek information; ask a question/ (s)
    b. Complaint – Law, a formal charge or accusation.
4. The Defendant stated several reservations to his inquiry.
    a. He is not an attorney
    b. That "In my humble opinion, the incident caused my civil and constitutional rights to be abridged, I am asking the Bar's professional opinion of the incident.
5. The Defendants civil and constitutional rights protect him from any person or court charging him with any civil damages when it is clearly stated in his inquiry that it is filed... "in my humble opinion." The inquiry is a personal opinion of the Defendant.

Is there a double standard of law in Dade County? A separate law for Judges and Attorneys than the one for the rest of Society?

In this case # 92-06352 CA 05 Judge Gordon ordered the Defendant, John Stembridge, to answer individually Mr. Mintz' complaint and interrogatories both of which disagree with the inquiry in fact both diametrically oppose the inquiry being sued upon. Yet in John Stembridge, case # 92-13319 CA 25, Judge Bloom has refused to order the seven Defendants who are lawyers, judges, or represented by the same to answer each charge individually in his Summons and Complaint, Amended Complaint, or other Motions and Orders as has Judge Gordon. Where is the justice? Does any one care in Dade County? How can the courts make one law right for one and the same law wrong for another? If the Defendant John Stembridge has to answer each of Mr. Mintz's allegations, why doesn't Judge Bloom require the same from the seven Defendants in the case before him?

If this court continues to allow this malicious prosecution to continue the Defendant John Stembridge will hire professional investigators at the Plaintiff's and Court's expenses to expose the one sided justice in this case before a Federal Grand Jury Investigation.

Mr. Stembridge's Denial of Mr. Mintz' Complaint.

1. Deny
2. No knowledge
3. Admit
4. No knowledge
5. Deny
6. Deny – Mr. Stembridge did not file a Bar Complaint. He filed a formal inquiry to obtain answers to pertinent legal and constitutional issues concerning Mr. Mintz's representation of Preferred Risk Mutual Insurance Company of Iowa. Namely that at least three of Mr. Stembridge Civil and constitutional rights have been abridged by the courts in his legal claim against Preferred Risk.
7. Deny – Again Mr. Stembridge did not file a false Bar Complaint – But rather a true formal inquiry concerning legal and constitutional questions, which should be of concern to all in the legal, judicial, political and insurance industry fields.
8. Deny – Truth is not libel. The truth is the Defendant John Stembridge was denied his constitutional rights to a trial by jury of all the issues of his case.
9. Deny – Mr. Mintz, in order to pass the bar exam had to pass exams on torts, real property, rules and ethics of professional conduct, criminal law, and the constitutional rights to American Citizens. These civil and constitutional rights of Mr. Strmbridge have been abridged by our courts in his legal claim against

Preferred Risk Mutual Insurance Company of Iowa.

1. The right of the pursuit of happiness
2. The right to have one's property as well as his life protected by those sworn to uphold the constitution.
3. The right to a trial by an impartial jury of all the issues of a case.

These rights seem to be non existent to Mr. Mintz in his firm's defense of Preferred Risk Mututal Insurance Company of Iowa. Not once did Mr. Mintz cite any of the cases cited by Mr. Stembridge in his formal inquiry or his Writ or Certariori to the United Stated Supreme Court. Mr. Mintz's (a) (b) (c) points are false. Mr. Stembridge did not "state" but twice the Judge concerning the laws in Florida governing the conduct of the insurance industry.

10. Deny – See 9
11. Deny
12. Deny

13. Deny – Mr. Stembridge filed an inquiry not a bar complaint. The Plaintiff Mark Mintz filed this action in a last ditch effort to try to prevent Mr. Stembridge from charging him, his client, et al, with the more serious charged of fraud, collusion, conspiracy, obstruction of justice see case # 02-13319 CA Summons and Complaint, Amended Complaint. How Mr. Mintz, Neu, and Holland when Mr. Stembridge was appealing to the U.S. Supreme Court cooperated in an illegal hearing before Judge Harvey Goldstein December 14,1990 which defrauded the Plaintiff of over $ 2100.00 in interest. Then when Mr. Stembridge challenged them with collusion, Mr. Neu. Filed another motion for re-hearing before Judge Harvey Goldstein, Mr. Mintz, or Mr. Holland challenged Mr. Neu's false re-hearing motion in order to cover their tracts.

(See Plaintiff's Amended Complaint and other pleadings.)

14. Deny – Mr. Stembridge filed the inquiry with the Florida Bar at the direction of the FBI and other government officials without malace – except malice at the injustice and obstruction of justice of this case, - on the other hand all that Mr. Mintz is charging Mr. Stembridge, Mr. Stembridge now alledges against him in this action.

Now files a counter suit against Mr. Mintz for damages in excess of $10,000.00.

1. For Malicious prosecution
2. For filing without grounds or cause
3. Mr. Mark Mintz has made an unmistakable gross error. (See Plaintiff's June 1, 1992 Summons and Complaint, Amended Complaint and other pleadings.)

Mr. Stembridge Answers to Interrogatories,

1. Please state the reason why you filed a Bar Complaint against Mark J. Mintz, Esquire on May 3, 1991

   The Defendant did not file a Bar Complaint.
   Not being a lawyer, the Defendant filed an inquiry with the Florida Bar seeking honest answers regarding the abridgement of his civil and constitutional rights:

   (1) having his property as well as his life protected

   (2) having his right to a trial by an impartial jury of all the issued of his complaint

   (3) having his right to the pursuit of happiness protected by those sworn to uphold these rights guaranteed by the Constitution for each Citizen.

2. Please state the reason why you filed a Bar Complaint against Mark J. Mintz, Esquire on May 7, 1991.

   The Defendant John Stembridge did not file a Bar Complaint against Mark J, Mintz on May 7,1991.

3. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to the Florida State Insurance Commissioner.

   The Defendant John Stembridge did not send copies of a bar complaint to the Florida State Insurance Commissioner.

4. Please state why you sent copies of the Bar Complaint filed against Mark H. Mintz, Esquire to the Florida State Attorney General

   The Defendant John Stembridge did not sent copies of a bar complaint to the Florida State Attorney General.

5. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to the Federal Bureau of Investigations.

   The Defendant John Stembridge did not send copied of a bar complaint to the Federal Bureau Investigations.

6. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to Byrd Duke, Esquire.

   The Defendant John Stembridge did not send a Bar Complaint to Byrd Duke, Esquire.

7. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire.

   The Defendant John Stembridge, did not send copies of a Bar Complaint to Robert Korner, Esquire.

8. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to Stuart Simon, Esquire.

The Defendant John Stembridge did not send copies of a Bar Complaint to Stuart Simon, Esquire.

9. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to Dam Holland, Esquire.

   The Defendant John Stembridge did not send copies of a Bar Complaint Sam Holland, Esquire.

10. Please state why you sent copies of the Bar Complaint filed against Mark J. Mintz, Esquire to Howard Neu, Esquire.

    The Defendant did not send copies of a Bar Complaint to Howard Neu, Esquire.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Hearing was mailed to Mark J. Mintz 1700 Sans Souci Blvd., Miami Fl. 33181, this 3rd day of November, 1992.

"s/_"
John M. Stembridge, Pro Se

Notary "s/_" Date 11-3-92
STAMPED
DEBORAH A. ODOM
State of Florida
My Comm. Exp. 6-22-93
Bonded

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL, CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 92-13319 CA 10

JOHN M. STEMBRIDGE,
Plaintiff,

vs.

PREFERRED RISK MUTUAL INS., CO. OF IOWA, JUDGE MARIO GODERICH MIRLE, KEITH TRUPPMAN BYRD & MARIE DUKE, ROBERT & JEAN KORNER, SAM HOLLAND, HOWARD NEU, GOVERNOR LAWTON CHILDS, HARVEY RUVIN, JUDGE MARGURITA ESQIROR.
Defendants

VERIFIED AMENDED COMPLAINT

Brief History of the Case

Mr. Chesterfield Smith, past President of the American Bar Association has said there is an incompetent "fringe of 20 to 25 percent of the lawyers now practicing whom he would not trust to do anything, quoted from "You and your lawyer" by Herbert S. Denemberg, former Professor of Law, Temple University; former Commissioner of Insurance, Commonwealth of Pennsylvania.

Contrary to Judge Bloom's testimony of his inability to understand the Plaintiff's claim after seven months of motions and hearings in his chambers, this case is very simple. Simply put, it involves crime and its cover up by the defendants for nearly sixteen years.

First, it involves the hate crime of anti-Semitism against the Plaintiff, JOHN M. STEMBRIDGE, and his neighbor, Bill Schieb, who resides at 2236 Pierce Street, Hollywood, Florida.

Second, it involves crimes of arson and malicious vandalism committed against the Plaintiff's property located at 2233 Pierce Street Hollywood, Florida which occurred in 1977.

Third, it involves crimes of fraud, civil theft, defamation of character, conversion, intentional infliction of mental and emotional cruelty, all perpetrated upon the Plaintiff, JOHN M. STEMBRIDGE, by PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. The claim further involves a RICO criminal scheme devised by the defendants to cover and protect PREFERRED RISK from having the above allegations of illegal and tortuous actions against the Plaintiff, JOHN M. STEMBRIDGE, being heard by a panel of impartial jurors for nearly 16 years.

Fourth, it involves the crime of obstruction of justice by those in the judicial system who are sworn to uphold the Constitution by protecting the lives, property and rights of its citizens.

Fifth, it involves the crime of perjury and dishonesty toward the court concerning the facts and laws as they apply to the Plaintiff's losses and claims against PREFERRED RISK.

Sixth, the wives of BYRD DUKE and ROBERT KORNER are named in counts one through seven (1-7) and count ten (10) because of their personal involvement in the business and practice of their husbands.

Seven, Judge Eqiroz has removed this case from the motions calendar in the clerks office, to her office George, the Judge's legal assistant, refused to put the Plaintiff's order for FINAL DEFAULT JUDGMENT on Judge Esqiroz's May 17, 1993 hearing calendar although there were no answer or motions to dismiss the Plaintiff's February 16, 1993 from MARIE DUKE AND HOWARD NEU.

Eight, PREFERRED RISK, SAM HOLLAND AND Judge MARIO GODERICH did not appear at the May 17, 1993 hearing and are in default.

Nine, Judge Esqiroz's bailiff and legal assistant could not tell the Plaintiff which defendants answered the Plaintiff's February 16, 1993 amended complaint, or which defendants filed a motion to dismiss, or which defendants failed to appear at the May 17, 1993 motion hearing.

In 1988, during the hearing on Motion For attorneys Fees, SAM HOLLAND was quoted as saying to Judge Salman: "Your Honor, what PREFERRED RISK did to my client is against the law since the Bad Faith Statute in 1982." What MR. HOLLAND knew, but failed to tell the Court, (either at that time or any time before) was that what PREFERRED RISK did to his client in 1977 was also a violation of tort law then as well as the Bad Faith Statute since 1982. It is this

Plaintiff's contention that the authors of the Constitution provided for remedies to even the least American to be protected from fraud and theft by the courts. PREFERRED RISK stole the Plaintiff's protection and converted said funds to its own use for nearly sixteen (16) years, thereby depriving the Plaintiff of the coverage provided for and for which the Plaintiff paid money.

Like a pack of thieves with no honor, all of the above Defendants, have conspired, along with the insurance industry, to profit themselves financially by protecting PREFERRED RISK from being required to account for their alleged criminal acts and have done so at the expense of the Plaintiff. The partial and unilateral protection afforded to the Defendants by the courts have deprived the Plaintiff of his dignity, well being, livelihood, and his civil and constitutional rights. This is a reservation of the Plaintiff's opinion of the Defendants actions after nearly sixteen (16) years of abuse by the justice system.

For the past sixteen years, the Plaintiff has suffered at the hands of the Defendants and has experienced mental anguish, harassment, denigration and financial deprivation, all of which have been perpetrated at the expense of the Plaintiff and inured to the benefit of the Defendants.

In order to protect the benefits and rights of nearly 300,000,000 American citizens, the Plaintiff moves this court for an order which will rectify this situation and cause the Defendants to be accountable for their wrongful acts, and by such order, make these Defendants stand as an example to all judges, lawyers, and insurance companies who, by this type of actions, create pain and suffering to many such as the Plaintiff. It now appears that Judge Bloom has joined the ranks of the many other Circuit and Appellate judges who have acted in such a manner as to protect insurance companies involved in such fraud and specifically in this case PREFERRED RISK.

PRESENT STATUS

It is possible that the Plaintiff, not being formally trained in law has made several mistakes that he is not knowledgeable of, but the defendants lawyers and judges who are formally trained in law have also made mistakes which the court has not equally challenged as it has the Plaintiff in this case such as:

A.For seven months Judge Bloom has followed the examples of all the other circuit and appellate judges in the Plaintiff's Case No. 80-7272 CA by unilaterally protecting PREFERRED RISK as well as the other Defendants now in this case from having to answer any of the charges in any of the Plaintiff's complaints since June 1, 1992, or for their failure to answer to sign a final default judgment against said Defendants in favor of the Plaintiff.

B. In September 1, 1992 transcript, Judge Bloom never cross examined the Defendants as he did the Plaintiff as to why they failed to answer in writing within the allotted time the Plaintiff's June 1, 1992 Summons and Complaint nor did he specifically ask them as required by law to verbally answer in his Chambers as to whether they conspired to defraud the Plaintiff as alleged. The Judge was knowingly or unwittingly protecting the Defendants and was in error by not ordering the Defendants to answer the Plaintiff's Summons and Complaint or for their continued failure to sign a Final Default Judgment. Instead, he chose to continue as the previous Judges since 1977 to protect PREFERRED RISK'S illegal actions while continuing to penalize the Plaintiff by dismissing his complaint with leave to amend.

C. In his interim order, Judge Bloom admitted meeting privately with the defendant attorneys without the knowledge of the Plaintiff – this is illegal and is a breach of civil rules and procedures which prejudices the Plaintiff's case.

D. By not ordering the Defendants to answer the Plaintiff's Summons and Complaint and Subsequent Complaints or signing a Final Default Judgment in favor of the Plaintiff, Judge Bloom bought time for MARK MINTZ AND KEITH TRUPPMAN to further harass and torment the Plaintiff by having Judge Jon Gordon sign an illegal summary judgment against Plaintiff thereby inflicting more pain and suffering upon the Plaintiff. This was filed by Mintz and Truppman in a vain attempt to prevent the Plaintiff from filing criminal charges against them and the other Defendants, in this claim, all to no avail. Justice will prevail in this case when all their criminal actions come to light.

E. It is an unmistakable gross error for Judge Bloom to admit that he does not understand the Plaintiff's claim after seven months of motions and

hearings in his chambers. Had he dutifully ordered the Defendants to answer the Plaintiff's Summons and Complaints, then he would have clearly understood that the Plaintiff's claim involves crime, fraud, distortion, anti-Semitism and their cover up by the Defendants. He would know that PREFERRED RISK's actions were illegal in 1977 at the time of the Plaintiff's loss as well as illegal today.

F. In the Plaintiff's transcript of the December 17, 1992 hearing, Judge Bloom erred on page 12 when asked by the Plaintiff if the Defendants have to answer the Plaintiff's Summons and Complaint. Judge Bloom responded "...unfortunately, they do not have to do that" (Lines 11-19). That answer may be true when the Judge refuses (as Judge Bloom has done for seven months) to order the Defendants to answer. However, Rule 1:110 states that the effect of failure to answer or deny is to admit. All the Defendants have been in default since the June 1, 1992 Summons and Complaint and their criminal actions have been protected by the courts rather than the victim of their acts.

G. In the September 1, 1992 transcript, Judge Bloom stated that law is all about which side can get the upper hand. Perhaps that statement is a reflection of Judge Bloom's experience in the Dade County Justice System, however, our Constitutional rights are secured only by fair and impartial courts and the proper administration of written law; not word games or flimsy interpretations and acting performances. If Judge Bloom's assertion were correct, there would be little chance that private citizens could be afforded a fair trial on the merits of any claim, given the power and prestige of expensive legal firms and the expertise available only to more fortunately situated companies such as PREFERRED RISK.

H. From June 1, 1992 to October 27, 1992, Judge Bloom failed to poll the attendance of the Defendants or to acknowledge the absence of those not appearing on their own motions.

I. Judge Bloom failed to find BYRD DUKE, ROBERT KORNER, JUDGE MARIO GODERICH in default for failing to appear on their own motions to dismiss.

J. Now, rather than to correct the possible oversight on the part of the court in failing to enter a Final Default Judgment against the above Defendants for failure to answer the complaint or to appear, Judge Bloom has simply recused himself. The Plaintiff fails to understand Judge Bloom's inability to understand this simple claim.

Sequence of Events

1. The Plaintiff, JOHN M. STEMBRIDGE, was the owner of seven (7) income-producing buildings containing nine (9) units located in Hollywood, Broward County, Florida.

2. In April 1976, the Plaintiff paid to Defendant, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., the sun of One Thousand Six Hundred and one Dollars ($1,601.00) for a three year policy that protected Plaintiff's property from wind, fire, and malicious vandalism. See Third Amended Complaint previously filed in complaint.

3. One year after the purchase of such policy, in 1977, the Plaintiff's property was torched by fire and maliciously vandalized following the Plaintiff serving eviction notices upon the tenants occupying Units 1 and 2 for their anti Semitic acts and malicious vandalism of Bill Scheib's home across from the Plaintiff's property.

4. The acts described above consisted of painting a huge Swastika on the front of Bill Scheib's home: driving an automobile through his hedge and leaving tire tracks throughout his lawn.

5. The Plaintiff herein, JOHN M. STEMBRIDGE, has been and still continues to be an ardent supporter of Israel and of Israel's right to be regathered to Zion in peace in reconciliation with her neighbors, then suffered the wrath of these tenants when they turned their anger toward him by vandalizing and torching his buildings after he served eviction notices on them for their vandalism and anti Semitic acts against Bill Scheib. Then, the Plaintiff suffered greater loss when PREFERRED RISK denied payment.

6. Upon the filing of a claim against the Defendant PREFERRED RISK, Plaintiff was declined coverage for the above damage to his property, and was forced to seek a remedy through the filing of a lawsuit in 1980 case 80-7272 CA in order to recover for his loss. The reaction of the Defendant PREFERRED RISK, to the Plaintiff's claim is clearly shown in the recently found incriminating deposition of claims adjuster Paul Westbury, in his deposition taken after the loss.

> "I immediately got on the phone, told them this was not the type of loss we wanted to insure. The agent that wrote this was only with the company a very short time. It's obviously why he was not, because the company does not insure this type of building, but naturally we were on the block, we wrote the policy the agent made underwriting the apartments, because the company would have never been—this agent wrote this, was terminated maybe as a result of this, I don't know, but he didn't stay around very long."

Instead of being concerned for its policy holder and his trauma, PREFERRED RISK thought only of itself seeking only to protect itself rather than its policy holder from 1977 to 1993. No mercy or compassion has

PREFERRED RISK shown. Furthermore, the salesman, Roger Crist, who sold the Plaintiff the aforementioned policy moved out of Miami and PREFERRED RISK'S agent, Virgil Poole, for whom the salesman worked closed his office in North Miami and moved out of the state.

The Plaintiff's attorney, BYRD DUKE, was the first to compromise the Plaintiff's claim by illegally protecting PREFERRED RISK by refusing to file any bad faith counts or order the above incriminating transcript of Westbury's deposition. The transcript only came to light recently when the Plaintiff found it among papers which had been exchanged by Defendants MINTZ and KORNER. MR. DUKE further refused to sue the above agent, Virgil Poole, for errors and omissions and refused as well to sue PREFERRED RISK for its bad faith tortfull actions in spite of urging from the Plaintiff and other lawyers and insurance experts in behalf of the Plaintiff in this matter. As a former Circuit Court Judge, it seems completely unlikely that BYRD DUKE can justify ignorance of the law in such matters, and baffles this Plaintiff as to the reasons for failing to properly represent his client, the Plaintiff herein. It is believed that defendant DUKE was in collusion with PREFERRED RISK, which acts inured to the detriment of the Plaintiff, and further, constitute a grave illegal act on the part or such an attorney. The evidence is clear: PREFERRED RISK, WHETHER because of an inept salesman or any other reason, wrote and accepted payment for insurance coverage on behalf of the Plaintiff, JOHN M. STEMBRIDGE: the Defendant, PREFERRED RISK, failed to comply with the provisions of said policy, and thereby caused the expense, pain and suffering, and other liabilities experienced by the Plaintiff since the above acts of vandalism which robbed Plaintiff of his property and livelihood.

7. At the time that Plaintiff paid PREFERRED RISK the sum of One Thousand Six Hundred and One ($1,601.00) dollars, the Plaintiff owned three furniture stores which grossed approximately $600,000.00 a year; was the host of a weekly "Inspirational Hour" television Concert Series. All of the above were closed or shut down between 1977 and 1980, except one store, largely due to the Plaintiff's financial adversities, all caused by the actions of PREFERRED RISK and the courts.

8. All of the above culminated in nearly sixteen years of litigation, untold expense to the Plaintiff, as well as the ongoing efforts of the Plaintiff to remain in business and to recover from the loss of his property. For all of the expense and efforts of the Defendants to cover up for each other, and their willingness to pay millions to protect themselves from criminal prosecution, the Plaintiff, JOHN M. STEMBRIDGE, has lost millions of dollars in gross revenues from his stores (not counting the revenues lost from the damaged buildings for which PREFERRED RISK was liable to protect and to make whole up to the policy amount).

9. PREFERRED RISK was found guilty of breach of contract and paid for this crime March 1992 some fifteen (15) years after the Plaintiff's loss in 1977. Under law, the Plaintiff is now entitled to sue for compensatory damages suffered, for punitive damages for tort, and may now sue for statutory bad faith actions of the named Defendants for collusion and conspiracy to defraud the Plaintiff.

AMENDED COMPLAINT

THIS IS AN ACTION for compensatory damages of $3,000,000.00 and for punitive damages of $10,000,000.00 plus costs, interest and attorneys fees. The Plaintiff, JOHN M. STEMBRIDGE, sues the Defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, individually, jointly and severally and alleges.

COUNT I

COLLUSION AND CONSPIRACY TO COMMIT FRAUD

Plaintiff alleges:

1. According to Black's Law Dictionary, the definition of collusion is stated as " ...an agreement between two or more persons to defraud a person of his rights by the forms of law or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of law means for the accomplishment of an unlawful purpose." Hay Hosiery Mills v. United States, 64 Feb.2d 150 (U.S. District Court, Montana-CCA, Mont.).

Further, "A secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceit purposes." W.E. Bowen Improvement Co. v. Van Hoffsen, 209 Mo.App.629, 238 S.W. 147, 149; Daly v. Haight, 156 NYS, 538, 541, 170 (App. Div. 169); "A secret arrangement between two or more persons whose interests are apparently conflicting to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice would not give them, by deceiving a court or its officers." Railroad Co. v. Gay, 86 Tex. 571, 26 S.W. 599, 25 L.R.A. 52; Balch v. Beach, 119 Wis. 77, 95 N.W. 132.

2. The Defendants conspired together to protect PREFERRED RISK from having any of its tortuous acts and/today statutory bad faith actions against the Plaintiff from being heard by an impartial panel of jurors for nearly seventeen (17) years.

3. All of the attorney defendants had complete and comprehensive knowledge of torts and statutory law and therefore were equally liable, as the Defendant, PREFERRED RISK, to the public trust mandate. All were knowledgeable that failure of the public trust mandate causes such insurance company to be liable in tort and subject to an award of punitive damages for such tortuous actions against a claimant.

4. In the December, 1985 hearing before Judge Goderich, on the Plaintiff's Third Amended Complaint, defendant MINTZ stated that in Florida, an insurance company can deny protection and otherwise mistreat its policy holder and only be liable for the policy amount. As a result, Defendant GODERICH, for the third time, protected PREFERRED RISK from its illegal tortfull acts against the Plaintiff by striking the bad faith and punitive damage counts, the heart of the Plaintiff's claim. From that time until March 1987, Defendant KORNER refused to challenge Defendant MINTZ' misrepresentation of the law or to challenge the Judge's ruling in spite of numerous phone calls and visits by the Plaintiff, including two letters of inquiry in November 1986 and January 1987 and several inquiries personally as to why no activity by KORNER (for which the Plaintiff paid separately) from attorney Ed Winter.

5. After more than a year of pleading by the plaintiff to act on his case, on March 7, 1987, Defendant KORNER admitted verbally and in writing to the Plaintiff that he had committed malpractice against him for failing to prosecute this case for over a year in spite of all the urging and expense of the Plaintiff urging him to act. KORNER offered to pay him $40,000.00 not to sue him for malpractice. However, he failed to mention that this failure was due to his collusion with the Defendant PREFERRED RISK.

6. This is evidence on March 12, 1987 at the Dade County Courthouse, KORNER, in concert with the attorney for PREFERRED RISK, Defendant TRUPPMAN and in concert with KORNER'S personal attorney, all three in collusion, threatened and intimidated the Plaintiff by telling him that if he did not sign and accept the offer of PREFERRED RISK to release PREFERRED RISK from all bad faith actions, that Judge Salman would dismiss his case the next day and that the Plaintiff would receive nothing (-0-) for his losses, pain and suffering. This was a carefully calculated effort on the part of the Defendants to get PREFERRED RISK excused from compensatory and punitive damages owed to the Plaintiff. Further, KORNER had made himself "judgment proof." He did not have any malpractice insurance, and his real estate and other holdings were in his wife's name. Had Plaintiff succumbed to the threat put before him by the Defendants, he would have been without recourse or remedy for his claim.

SAM HOLLAND, knowing all of PREFERRED RISK'S tortfull actions above, upon taking the case from KORNER, chose as DUKE and KORNER previously to protect PREFERRED RISK from accounting for its illegal bad faith tortfull activities by only suing for breach of contract and not for the fraudulent bad faith claim of the client. This is in spite of all the facts of the case and research law on punitive damages for torts and breach of contract given him by the Plaintiff JOHN M. STEMBRIDGE for which the Plaintiff paid to have done.

NEU, also being informed of PREFERRED RISK's above fraudulent actions also refused to use any of the above research law as it applied to the facts in the Plaintiff's claim in his weak appeal for the Plaintiff. Choosing to appeal only one count of emotional distress with punitive damages, NEU left out the greater heart of the Plaintiff's appeal of the counts of fraud, insurance, code violations, conversion, loss of use of property, loss of income which caused the emotional distress.

Finally, appealing the August 29, 1990 decision of the Florida Supreme Court failure to take Jurisdiction, the Plaintiff heavily in debt, working to keep his last store open and trying to protect his civil and constitutional rights, commenced researching, editing, and writing his own writ of certiorari to the U.S. Supreme Court. The Plaintiff was paying NEU to review, oversee and guide the preparation of the Plaintiff's writ. NEU, in collusion with MINTZ and HOLLAND allowed the Plaintiff to file the writ (November 30, 1990), one day out of time.

The Plaintiff with his secretary met with NEU for nearly two (2) hours in NEU's office on November 30, 1990, the day the writ was filed with the U.S. Supreme Court. Not once from August 29, 1990 to November 30, 1990 did NEU caution the Plaintiff nor his secretary that November 30, 1990 would be one day out of time.

This was part of the continued orchestrated plan of cover up by the Defendants. The Plaintiff's writ of certiorari and the case law, it cites as it applies to the facts of his claims against PREFERRED RISK exposes DUKE, KORNER, HOLLAND and NEU'S willful failure to apply the law to the facts of the Plaintiff's claim against PREFERRED RISK.

Knowing that the Plaintiff's case was filed one day out of time, NEU, in collusion with MINTZ and HOLLAND allowed a motion on interest by MINTZ and a motion on partial satisfaction of judgment by HOLLAND before Judge Harbey Goldstein to go forward unchallenged Dec. 14, 1990. Although phoning the Plaintiff two or three (2 or 3) times that it was unnecessary for the Plaintiff to attend that he, NEU, would represent him. NEU called November 13, 1990 the afternoon before to tell the Plaintiff that he could not attend the hearing. NUE left the Plaintiff exposed to the

mockery of Judge Goldstein and MINTZ as to blood money and to the blasphemies of SAM HOLLAND to MINTZ after the hearing that he 'wanted this —- (Blasphemy) case off his desk". As a result of this illegal hearing, Judge Goldstein signed an order which defrauded the Plaintiff of several thousands dollars. When the Plaintiff charged HOWARD NEU with collusion with MINTZ AND HOLLAND, NEU filed a motion for a rehearing on the interest issue. NEU perjured himself in this motion claiming that he did not know the interest issue was to be heard. Becuse of their collusion with NEU, neither Juge Goldstein, MINTZ nor HOLLAND challenged NEU'S untruthful statement but NEU, MINTZ and HOLLAND quietly had Judge Goldstein sign another order June 5, 1991 to reverse his previous order in an effort to cover their tracks. MINTZ's and HOLLAND's failure to challenge NEU'S false statement is evidence that PREFERRED RISK was working in collusion with the Plaintiff's attorneys to the detriment of the Plaintiff.

In his August 14, 1992 motion to dismiss, PREFERRED RISK attorney Steven A. Edelstein made an unmistakable gross error by making a false statement when he stated "further upon information and belief, any and all actions which the Plaintiff may or may not be complaining of, took place in Dade County Florida as a consequence of which there is no basis for change of venue to Palm Beach County."

To set the record straight, the Plaintiff's property which was torched and vandalized was always located in Hollywood, Broward County, Florida. BYRD DUKE, being a former Circuit Court Judge, knowing the judges in Dade County and for his own reasons which are clear now had the case transferred from Broward County to Dade County. That was the beginning of a nearly seventeen (17) year judicial nightmare for the Plaintiff. The Dade County, Justice System continues under a dark cloud in "Operation Court Broom." Unquestionably, the Plaintiff's case will become a bigger scandal than Operation Court Broom for this case exposes the sophisticated white collar crimes that seldom, if ever, come to light.

Wherefore, Plaintiff demands judgment against the above Defendants, PREFERRED RISK MUTUAL INS. CO. OF IOWA, INC., JUDGE MARIO GODERICH, MARK MINTZ, KEITH TRUPPMAN, BYRD & MARIE DUKE, ROBERT & JEAN KORNER, SAM HOLLAND, HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus costs, interest and incurred attorneys fees since his loss in April 1977.

COUNT II- RICO

Wherefore Plaintiff alleges:

The Plaintiff is completely baffled these seventeen (17) years by the conduct of defendant PREFERRED RISK straining at a gnat and swallowing a camel. By doing the just and right thing under law, PREFERRED RISK could have paid the Plaintiff $ 30,000.00 at the time of loss. Instead, it set out from the beginning on a nearly seventeen (17) year trail, involving the insurance industry as well as the other Defendants spending millions to compromise the political, legal, and judicial systems in an elaborate criminal scheme to prevent the Plaintiff's claim from setting a precedent for the good of all the other American insurance policy holders defrauded by the tortfull statutory bad faith actions of PREFERRED RISK and the insurance industry.

During these seventeen (17) years, Judge Goderich who committed an unmistakable gross error when he struck the heart of the Plaintiff's claim against PREFERRED RISK in 1985 and by such act obstructed justice for the Plaintiff was rewarded for such criminal acts by the Governor with an appointment to the Third Appellate Court. Amazing how all the government leaders jump through hoops to protect the criminal actions of PREFERRED RISK and not its victim, the Plaintiff JOHN STEMBRIDGE. Why?

It was to the Third Appellate Court that the Plaintiff had to appeal Judge Goderich's illegal striking the heart of his case. Judges Barkdull, Nesbitt, and Jorgenson followed the colleague Judge Goderich's example by protecting PREFERRED RISK'S criminal actions from coming to light before an impartial jury with their per curiam affirmed ruling. This effectively obstructed justice for the Plaintiff by denying his constitutional right to appeal their decision to the Florida Supreme Court when they refused to write and opinion which could have been appealed. True to form the Appellate Court followed their colleagues Goderich's example by protecting PREFERRED RISK from giving an account before and impartial panel of Jurors of its illegal tortfull and now statutory bad faith actions against the Plaintiff.

When the Plaintiff took matters away from the lawyers and into his own hands by researching, editing, and writing his own writ of certiorari to the U. S. Supreme Court, HOWARD NEU, while being paid by the Plaintiff, made sure that it was filed one day out of time. Thereby all Defendants and courts from 1977 to 1993 have effectively protected PREFERRED RISK from its illegal actions while denying the Plaintiff his civil and constitutional rights to a trial by jury of all the facts in dispute.

1. Under Rule 608, RICO, Criminal Scheme, Civil Theft, Conversion, and Fraud, Plaintiff alleges that beginning in April 1977 and until the present, Defendant, PREFERRED RISK MUTUAL INSURANCE CO. OF

IOWA, (hereinafter referred to as "PREFERRED RISK"), with the support of the insurance industry and in cooperation, collusion and joint conspiracy with Defendants MARK MINTZ (hereinafter "MINTZ"), KEITH TRUPPMAN (hereinafter "TRUPPMAN"), Judge MARIO GODERICH (hereinafter "GODERICH"), BYRD AND MARIE DUKE (hereinafter "DUKE"), ROBERT AND JEAN KORNER (hereinafter "KORNER', SAM HOLLAND (hereinafter "HOLLAND"), and Defendants HOWARD NEU (hereinafter "NEU"), entered into and conducted a pattern of criminal activity in violation of Florida State Section 817.232(2) and;

2. Defendant PREFERRED RISK, with the support of the insurance industry, by spending millions, has compromised the political, legal, and the judicial system in an elaborate scheme to defraud the Plaintiff of his rightful property, livelihood, use of his name, mental and emotional well being, his civil and constitutional rights for nearly seventeen (17) years.

WHEREFORE, Plaintiff demands judgment against all defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT III

OBSTRUCTION OF JUSTICE

Plaintiff alleges:

1. The defendants obstructed justice by knowingly violating the constitutional rights of the Plaintiff and further violated the Plaintiff's rights by unethical conduct of an attorney licensed to practice law in Florida. The Florida Bar, in its mandate, state impari muteria:

RULE 4-3:3 –CANDOR TOWARD THE TRIBUNAL, MISLEADING

> Legal argument:
>
> "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal." The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case."

As recently as May 17, 1993, Keith Truppman continued to misrepresent the law to the court as it applies to my case (see transcript of hearing).

2. Knowing this law, the rules of the Florida Bar, and the constitutional rights of American citizen to own property and the oath of its officers to protect the property and lives of its citizens, the defendants conspired together to protect the crimainal, PREFERRED RISK, rather than its victim/plaintiff, JOHN M. STEMBRIDGE, from having its illegal actions of fraud, conversion, civil theft, criminal scheme, collusion and conspiracy, causing the Plaintiff to lose his property, livelihood, and well being for nearly seventeen (17) years and from having his case heard by a jury.

WHEREFORE, Plaintiff demands judgment against the Defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus costs, interest, and incurred attorneys fees since April 1977.

COUNT IV

BAD FAITH

Wherefore the Plaintiff alleges:

1. That all the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, have dealt in bad faith with the Plaintiff by fraudulently mishandling the Plaintiff's claim and wantonly misrepresenting the law as it applies to the Plaintiff's loss and the facts which caused that loss which severely injured the Plaintiff.

2. Wherefore the Plaintiff demands judgment against the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus cost, interest and attorneys' fees since April 1977.

COUNT V

CONVERSION

Wherefore the Plaintiff alleges:

1. That all the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN,

JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, have conspired to convert the Plaintiff's protection to PREFERRED RISK INS. CO. of IOWA INC. for nearly seventeen (17) years to the detriment of the Plaintiff. The end result is the defendants have stolen the Plaintiffs property, livelihood, name, and well-being for nearly seventeen (17) years.

2 Wherefore the Plaintiff demands judgment against the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus cost, interest and attorneys' fees since April 1977.

COUNT VI

VIOLATION OF PLAINTIFF'S CIVIL AND CONSTITUTIONAL RIGHTS

Plaintiff alleges:

1. The defendants have conspired together to defraud the Plaintiff of his civil and constitutional rights for nearly seventeen (17) years; more specifically:

a) to a trial by jury of all issues in dispute;

b) to the right to have the Plaintiff's property, as well as his life protected by those sworn to uphold the Constitution;

c) to the right by the Plaintiff to the pursuit of happiness.

WHEREFORE, Plaintiff demands judgment against the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $10,000,000.00 plus costs, interest, and incurred attorneys fees since April 1977.

COUNT VII

DEFAMATION OF CHARACTER

Plaintiff alleges:

All the above named defendants have made unmistakable gross errors in their improper handling of Plaintiff's losses, which have humiliated, defamed and severely injured the Plaintiff.

WHEREFORE, Plaintiff demands judgment against the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, for punitive damages of $10,000,000.00 plus costs, interest and incurred attorneys fees since April 1977.

COUNT VIII

BREACH OF CONTRACT

The Plaintiff alleges:

The Plaintiff's attorneys, BYRD DUKE, ROBERT KORNER, SAM HOLLAND and HOWARD NEU have breach their contract and oath as attorneys to represent the oppressed and helpless by failing to represent the Plaintiff's right to a full recovery of compensatory and punitive damages according to the law of the land and the facts of the case and have breached their contract with the Plaintiff which has severely injured the Plaintiff and his full recovery from PREFERRED RISK.

WHEREFORE, Plaintiff demands judgment against the defendants, BYRD DUKE, ROBERT KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $3,000,000.00 plus costs, interest and incurred attorneys' fees since April 1977.

COUNT IX

MALPRACTICE

The Plaintiff alleges:

Defendants, BYRD DUKE, ROBERT KORNER, SAM HOLLAND and HOWARD NEU, have committed malpractice against the Plaintiff by their calculated improper handling of his just claim against PREFERRED RISK and his right to full recovery for compensatory and punitive damages according to law and the facts of my claim against PREFERRED RISK which severely injured the Plaintiff's well-being.

WHEREFORE, Plaintiff demands judgment against the defendants, BYRD DUKE, ROBERT KORNER, SAM HOLLAND and HOWARD NEU, for compensatory and/or punitive damages of $3,000,000.00 plus costs, interest and incurred attorneys' fee since April 1977.

COUNT X

PUNITIVE DAMAGES

Wherefore the Plaintiff alleges that the defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and HOWARD NEU, because of their bad faith fraudulent actions previously stated in the history section of the complaint and in counts one through seven (1-7) and ten (10), are liable for punitive damages for these illegal actions against the Plaintiff JOHN STEMBRIDGE:

1. In 1976, the year that Plaintiff paid to PREFERRED RISK the sum of One Thousand Six Hundred and One ($1,,601.00) dollars for protection against wind, fire, malicious vandalism and one year before his loss Florida was considered to be a jurisdiction which imposed a covenant of good faith and fair dealing in all insurance contracts. In Escambia Treating Co. v. Aetna Casualty &Surety Co., 421 F.Supp., 1367 (N.D. Fla., 1976), it was explicitly held that under Florida law, an insurer has the implied duty to proceed in good faith and deal fairly with its insured. Is it possible that all the judges and lawyers in the Plaintiff's case were ignorant of such important law in Florida? Hardly.

Contrary to Judge Bloom, Judge Goderich, Judge Esquiroz and the Appellate Courts, who put more emphasis on the forms of the Plaintiff's pleadings, rather than on the merits of the case and the law, the above court ruled that the nature of the grievance should be the deciding factor rather that the form of the pleadings, by citing:

> "The nature of the grievance rather than the form of the pleading should be the deciding factor in whether or not the cause sounds ex delicto or ex contractu." Burton v. Juzwik, 521 p.2d 16, 22 (Okla. 1974).

This one case knocks out all the judges improperly dismissing the Plaintiff's complaints because of the form of his pleadings rather than the nature of the grievance that PREFERRED RISK continues to illegally commit against the Plaintiff.

Here, a Federal District court in Florida acknowledged, the same year (1976) that PREFERRED RISK sold the Plaintiff the protection policy and one year before the Plaintiff's loss, that the implied duty under Florida law of an insurance company to proceed in good faith and deal fairly with its insured, and held that a bad faith breach of that duty imposed liability in tort. Certainly, the judges on the Circuit and Appellate courts, as well as all lawyers coming before such court, had knowledge of such an important

ruling. Therefore, all are without excuse. Perhaps that is why they could not (or dared) answer or deny the Plaintiff's June 1, 1992 Summons and Complaint and Amended Complaint – for fear of committing perjury. Judge Bloom was in error for unilaterally protecting the defendants by not signing a Final Default Judgment in favor of Plaintiff. PREFERRED RISK through its attorneys' MINTZ and TRUPPMAN continue to lie to the courts concerning the law as it applies to the facts of my case up to and including the May 17, 1993 hearing before Judge Esquiroz.

2. Three years before the Plaintiff's loss, in Campbell v. Government Employees Insurance Co., 306 So 2d, 25 (Fla. 1974), the Florida Supreme Court adopted the more liberal rule. Because the insurer's conduct involved concealment and misrepresentation amounting to a "continued course of dishonest dealing", the defendant was subject to liability for punitive damages. The conduct included misrepresenting the seriousness of a claim and failure even to consider counter-offers. Id. at 532. The court's opinion reflected a definite change in attitude toward punitive damages which "are no longer looked upon as monstrous." Instead, the court noted that such damages have "helped to maintain public tranquillity by permitting the wronged Plaintiff to take his revenge in the courtroom and not by self help. Since compensatory damages do not fully compensate, punitive damages have a general salutary effect " and are rewarded to the insured party as a reward for his public service in bringing the wrongdoer to court." See, Plaintiff's Writ of Certiorari – U.S. Supreme Court, as well as Nova University Law Professor Phyllis Coleman's research on punitive damages in Florida – case law (previously filed in this case # 92-13319.)

3. All the defendant in this case, being attorneys, and certified by the Florida Bar, ultimately chose to obstruct justice by violating their oath as attorneys in order to protect defendant PREFERRED RISK, which acts inured to the detriment of the Plaintiff, STEMBRIDGE in violation of his civil and constitutional rights. Said defendants failed to cite any of these cases in their presentation to the courts nor any of the many other cases cited by the Plaintiff in his Writ of Certiorari to the U.S. Supreme Court filed in this case. Rather, these defendants chose to cover up the illegal criminal actions of PREFERRED RISK instead of protection the rights of their client, STEMBRIDGE. As a result, Plaintiff has suffered grave harm and injustice at the hands of his own counsel as well as the hands of the hired attorneys of PREFERRED RISK, and for these acts, Plaintiff demands judgment for punitive damages.

Wherefore, Plaintiff demands judgment against all defendants, PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., MARK MINTZ, KEITH TRUPPMAN, JUDGE MARIO GODERICH, BYRD and MARIE DUKE, ROBERT and JEAN KORNER, SAM HOLLAND and

HOWARD NEU, for punitive damages of $10,000,000.00 plus costs, interest and incurred attorney fees since April 1977.

I certify that a true and correct copy of the forgoing was mailed to the defendants this 29th day of June 1993.

"s/_____"
Plaintiff, John M. Stembridge

Date: _____
6/29/93

"s/_____"
Sandra Lee Ashney
Notary
(Stamped) NOTARY PUBLIC: STATE OF FLORIDA AT LARGE. MY COMMISSION EXPIRES DECEMBER 18, 1993. BONDED THRU HUCKLEBERRY & ASSOCIATES

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.: 80-7272 CA 20

JOHN M. STEMBRIDGE,
Plaintiff,
V.
PREFERRED RISK MUTUAL INSURANCE CO.
Defendant.

MOTION TO DISMISS ON SEVERAL GROUNDS

COMES NOW the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, by and through undersigned counsel and hereby files their Motion to Dismiss the Plaintiff's Second Amended Complaint on several grounds and states as follows:

1. Count I of the Second Amended Complaint fails to state a cause of action or any legal theory known in the State of Florida. Additionally, there is no cause of action for "reasonable expectations" under a policy of insurance.

2. Count II fails to state a cause of action recognized in the State of Florida. The Count seems to attempt to state a cause of action for fraud and intentional infliction of mental distress, however it does not contain sufficient ultimate facts nor all of the material elements for a cause of action of either in the State of Florida. The Count also fails to state with specificity the allegations of fraud, or the special damages incurred, or the special damages arising from the alleged mental distress with specificity as required by the case law of Florida and the Rules of Civil Procedure. Count II also improperly demands punitive damages, without setting forth any ultimate factual basis for same nor stating a cause of action for same.

3. Count III is a claim for loss of use of property and loss of rent, which is not a valid claim under the policy of insurance attached to the Amended Complaint, nor under the laws in regard to insurance policies in the State of Florida.

4. Count IV appears to be a Count for violation of Chapter 626 of the Florida Statutes, however the pleadings do not give the Plaintiff a cause of action under any provision of said Statute or the Common Law for the allegations set forth. Count IV does not state a cause of action for any theory known in the State of Florida. Count IV does not allege misrepresentation with sufficient specificity under the case law or the Rules of Civil Procedure. Count IV also seems to attempt a cause of action for intentional

breach of contract, which is not actual in the State of Florida as contracts can be breached even willfully in the State of Florida with no cause of action arising other than for the mere breach of contract.

5. Count 5 appears to be a claim under Florida Statute Chapter 812, which is statutory larceny and provides no cause of action for the facts as set forth by the Plaintiff. Count V further fails to state a cause of action or any ultimate facts necessary to state a cause of action for any theory known in the State of Florida, but instead of replete with mere conclusions of law.

WHEREFORE, the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, moves the Honorable Court to dismiss the Plaintiff's Second Amended Complaint with prejudice, same being nothing more than a mere re-statement of the prior Complaint which was dismissed.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 16th day of November, 1983 to: ROBERT D. KORNER, ESQUIRE, Attorney for Plaintiff, 4790 Tamiami Trail, Coral Gables, Fl. 33134

RESS, GOMEZ, ROSENBERG
AND HOWLAND, P.A.
Attorneys for Defendant
1700 Sans Souci Blvd.
North Miami, Fl 33181
Telephone: 893-5506
By_____
MARK J. MINTZ

Preferred Risk Mutual Insurance Company
1111 ASHWORTH ROAD, WEST DES MOINES, IOWA 50265

John M. Stembridge
(092)
2233 Pierce St.
Hollywood, FL 33020

P. R. Agcy. 9-214

Virgil Pool
14923 NW 7th Av
Miami, FL 33168

NO. 1-026-227 — Policy Number
3 Years — Policy Term:
4-1-76 — Inception
4-1-79 — Expiration

Subject to the stipulations, provisions, and conditions in this policy, the loss, if any, on building(s) covered herein is payable to:

Home Federal Savings & Loan Association, P.O. Box 2168, Hollywood, FL 33168

LOAN NO. 3510

mortgagee, as his, her, its or their interest may appear.

Peril(s) Insured Against	Amount	Rate	Code
Fire & Lightning Amount	$30,000	$1.03	15
Extended Coverage		.75	25
V&MM		.01	25

$1611.00 Total Premium For Policy Term Under D.P.P.P.

INSURANCE IS PROVIDED AGAINST ONLY THOSE PERIS AND FOR ONLY THOSE COVERAGES INDICATED ABOVE BY A PREMIUM CHARGE AND AGAINST OTHER PERILS AND FOR OTHER CONVERAGES ONLY WHEN ENDORSED HEREON OR ADDED HERETO.

Item No	Amount Fire or Fire and Extended Coverage, or Other Peril
1.	$30,000

DESCRIPTION AND LOCATION OF PROPERTY COVERED

Show construction, type of roof and occupancy of building(s) covered or containing the property covered. If occupied as a dwelling state number of families.

One story, shingle roof, frame, nine family apartment, located 2233 Pierce St., Hollywood, Broward, FL

SK-99(7-73)

308-1(3-69)

D206(8-72)

50A(5-74)

CASES CITED

Gruenberg v. Aetna Ins. Co. 9 Cal 3d 566, 510 P 2d 1032, 108 Cal Rptd. 480 (1973) Here California 4 years, before the Plaintiff's loss established that every insurance contract includes an implied duty of good faith. Breach of duty sounds in both contract and tort. A bad faith breach may entitle the insured to punitive damage.

Pendleton v Aetna Life Ins. Co. 320 F Supp. 425, 432 (E.D. La 1970) Here a Federal Court ruled that "Malfeasance of an implied duty, or failure to use reasonable care, gives rise to tort liability whether the foundation for the undertaking was gratuitous or contractual."

Escambia Treating v. Aetna Cas & Ins. Co. 421 F. Supp. 1367, 1370 (N.D. Fl. 1976) Here the U.S. District Court for the Northern District of Florida explicitly held that under Florida law an insurer had the implied duty to proceed in good faith and deal fairly with its insured. The Escambia court recognized that insurance company is liable in tort for its unreasonable, bad faith, refusal to pay the valid claims of the insured. It reasoned that since Florida courts clearly recognized the insurer's duty to act in good faith and accept reasonable settlement logic dictates "the Florida courts would also accept the 'aspect of the same duty' requiring the insurer to act fairly and in good faith in handling the claim of its own insured." Id. at 1370.

The Escambia court also acknowledged the availability of punitive damages under particular circumstances since a violation of the duty of good faith and fair dealing sounds in tort. Yet in order to recovery exemplary damages, the acts of the insured must be committed with "malice, moral turpitude, wantonness, willfullness, ourtrageous aggrevation, or indifference to the rights of others." Id. at 1371.

Thus, under the dictates of Escambia, Florida supposedly became united with those various jurisdictions that have accepted a theory of recovery based on tort for the insurer's wrongful refusal to pay a first party claim.

Here the Court ruled that good faith and fair dealing is mandated in all insurance contracts. Further, the Court held htat under Florida law an insurer has the implied duty to proceed in good faith and deal fairly with its insured. If not, it ruled that a bad faith breach of that duty imposed liability based in Tort for punitive damages.

Futher, the Escambia Case found that "Since the violation of the duty of good faith and fair dealingis tortuous in nature, punitive damages, as well as compensatory damages are recoverable in the proper case."

In support of its position, the Escambia Court cited Gruenberg v. Aetna Insurance Co. 9 Cal. 3d 566 510 P. 2d 1032, 108 Cal. Rptr 480 (1973). (This law was in place four years before the Petitioner's loss.)

The Escambia Court in support cited Gruenberg v. Aetna Insurance Co. 9 Cal 3d 566 510 P 2d 1032, 108 Cal. Rptr 480 (1973) (This was four years before the Petitioner's losses.

Referance: Law Journals on Bad Faith:

(1) Tort of insurer's bad faith 32 U. Miami L. Rev. 1259 (1978)

(2) J. McCarthy, punitive damages in bad faith cases (2d ed. 1978).

(3) ATLA member Henry G. Miller, "Living with Bad Faith" , 46 Ins. Coun. Jour. 34-43 (Jan. 1979).

Lehman v. King's Inc. 181 So 2d 228, 230 (Fla. 2d DCA 1965). Here the Court ruled tort if the acts are committed "with malice, moral, turpitude, wantonness or outrageous of tort", this breach may be sufficient to allow punitive damages.

Moore v. Southern Bell Tel & Tel. 176 So. 2d 558 (Fla 2d DCA 1965) In order to properly state a claim for punitive damages it is necessary to allege general facts and circumstances constituting fraud, malice, gross negligence or oppression.

Breach accompanied by fraudulent conduct.

Associated Heavy Equipment Schools, Inc. v. Masiello. The Court awarded punitive damages to a student for breach of a contract of instruction. Quoting the general rule from Griffith v Shamrock Village, the Court stated that the Plaintiff must demonstrate an intentional wrong. The Plaintiff proved a deliberate and wrongful breach of this implied duty by demonstrating, to the satisfaction of the jury, an intentional fraudulent scheme to induce the Plaintiff to the contract. Therefore the Court could properly grant punitive damages.

Three pronged analysis:

(1) Is there a contract

(2) Is there an implied on law duty separate from the con t ractual obligation?

Yes, this contract created an implied duty on the part of the school to perform in good faith and deal fairly with its stu dents.

(3) Did the defendant commit a malicious or willful breach of the implied duty which caused injury to the plaintiff?

Yes, the Plaintiff proved a deliberate and wrongful breach of this implied duty by demonstrating to the satisfaction of the jury, an intentional fraudulent scheme to induce the plaintiff to enter the contract.

Breach of Fiduciary Duty arising from a contractual relationship.

Restatement (second of Torts § 918 (2)(1977) provides: Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the Plaintiff that the Defendant caused or intended to cause and the wealth of the defendant.

A group health insurance company may be liable for compensatory and punitive damages for its refusal to pay first party benefits, based upon promissory estoppel, tortious breach of the State insurance code, and breach of implicit covenant of good faith and fair dealing.

1. Tynes V. Bankers Life CO. 731 p. 2D 1115 (Mont. 1986)

2. Britton v. Farmers Ins. Group, 21 P 2d 303 (Mont. 1986)

3. Nickolson v. United Pacific Ins. Co. 710 P. 2d 1342 (Mont. 1985) 29 ALTA L. Rep. 100-102 (Apr. 1986)

(Bad-faith breach of implied covenant of good faith and fair dealing in commercial lease contract equals tort plus, where appropriate, punitive damages).

As framework for the Plaintiff's bad faith claim in Tynes v. Bankers Life Co., lead case under review Montana law was crystal-clear in allowing a policy-holder a remedy for a carrier's breach of the implied covenant of good faith and fair dealing in refusing to pay claims under first party coverage, a remedy arising out of tort law and independent of the underlying contract.

Concerning Tynes v. Bankers Life Co., Tom on Torts states, pg 54 30 ALTA L. Rep. Mar. 1987 regarding Tynes v. Bankers Life Co.

"Insurance companies spend a disproportionate amount of their corporate energies in misguided attempts to dismantle the tort system [please check me here] These are the same companies which in the last generation have greatly enriched the professional vocabulary of "bad faith" by designed and deliberate dishonesty in their misdeeds and misdealings, not only with third-party claiments under liabiliting policies but also increasingly and devious refusals to pay claims on first party cov-

erage. As a Pennsylvania judge mordantly summed up this unsavory corporate malfeasance, "The insurer's promise to the insured to 'simplify his life', to put him 'in good hands', to lock him with 'a piece of the rock' or to be 'on his side' hardly suggests that the insurer will abandon the insured in his time of need."

Weiner v. Blue Cross/Blue Shield, Fla., Broward County Circuit Ct., No. 84-00840, Sept. 25, 1986; ALTA L. Rep. 408-09 (Nov. 1986) ("Centerpiece") (awarding $700,000.00 Compensatory and $5 Million punitive damages against Blue Cross/Blue Shield for extreme callousness in terminating group health insurance benefits).

Pistorious v. Prudential Ins. Co. of America, 123 Cal. App 3d 541, 176 Cal. Rptr. 660 (1981), 24 ATLA L. Rep 392-97 (Nov. 1981) (Where first-party deliberately embarked on policy of terminating health and accident disability payments "to see if a policy holder would complain" and not reinstating payments unless policy holder rigorously resisted, reviewing Court upheld as non-excessive compensatory award of $45,00.00 and 1 million in punitive damages because of carrier's "conscious disregard" of the rights of the insured; Prudential's "vast wealth " held to justify $1 million punitive damage award since the "function of deterrence...will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort").

If there is a floodtide of successful lawsuits against bad-faith insurance carriers, that wellspring, the fountainhead of bad faith tort litigations, arises from the outrageous mishandling of both third-part and first-party claims.

See W, Prosser & P. Keeton Torts: (5th ed. 1984); F. Harper, & James- and O. Gray, 13.9, PP. 172-177 (2d ed 1986) (good bibliography and collection of cases for bad-faith refusal to settle within the policy limits); W. Shernoff, S. Gage, & H. Levine, Insurance Bad Faith Litigation (1948); W. Shernoff, Payment Refused (1986) (inside bad-faith litigation by ATLA Member who is a major litigator in the field.)

Griffith v. Shamrock Village, 94 So. 2d 854 (Fla 1957) , the Court stated that the Plaintiff must demonstrate an intentional wrong. "To do so, it is necessary to allege some general facts and circumstances constituting fraud, malice, gross negligence or oppression."

Campbell v. Government Employees Ins. Co. 306 So. 2d 525 (Fla. 1974)

Federal Rules Civ. P.. Rules 11, 78 U.S.C.A.

Jorgenson v. Volusia County, 846 F. 2d 1350 (11th Cir. 1988).

2721 - Failure of counsel to cite controlling law violated Rule 11 and warranted imposition of Rule 11 and warranted imposition of sanctions. The memorandum failed to discuss or cite two clearly relevant cases:

City of Datona Beach v. Del Percio, 476 So. 2d 197 (Fla 1985) and New York State Liquor Authority v. Bellanca, 452 U.S. 714, 101 S. Ct. 2599, 69 L. Ed. 2d 357 (1981) we find that this failure supports the imposition of Rule 11 sanctions in the circumstances of this case.

With apparently studied care, however, they withheld the fact that the long-awaited decision by the Supreme Court of Fl. had been handed down. This will not do. The Appellants are not redeemed by the fact that opposing counsel subsequently cited the controlling precedent. The appellants had a duty to refrain from affirmatively misleading the Court as to the State of the law. They were not relieved of this duty by the possibility that opposing counsel might find and cite the controlling precedent, particularly where, as here, a temporary restraining order might have been issued ex parte.

Borowski v. DePay, Inc. 850 F. 2d 297 (7th Cir. 1988)

Imposition of Rule 11 sanctions was warranted based on counsel's "Ostrich-like" tactic of pretending that potentially dispositive authority against party's contention did not exist, misstating applicable law.

Rule 11 Sanctions should be born by counsel alone, without reimbursement by client, where they were imposed on the basis of inappropriate choice of legal arguments advanced on behalf of client.

The record in this egregious case of misleading and unprofessional attorney behavior compelled the district court to recommend that summary judgment be granted.

Because Plaintiff's counsel misstated and misrepresented the record below, we further award both Defendants their respective costs and attorneys' fees for having to defend this vexatious and frivolous appeal. Fed. R. App. P 38.

Singleton v. Foreman 43 SF 2d 962 (5th Cir 1970). (This ruling predated the Petitioner's loss by seven years.) After deciding that the complaint sounded in contract and in tort, Id 968 the fifth Circuit acknowledged that a cause of action exists in florida for insulting and abusive language resulting in mental distress..Defendant's alleged behavior was "Oppressive and showed such a great indifference to the persons and property right of the other [that] malice "may be imputed."

Fletcher v. Western National Life Ins. Co. 20 Cal. App. 3d 376 (Cal 1970); Brown v. First Ins. Co. 295 F. Suppl 164 (DCD 1968; Freshit v. State Farm Mutual Auto Ins. Co. 143 N.W. 2nd 612 Mich. Ct. App. 1966.

All this law before the Petitioner's loss shows clearly that the trial courts erred in not allowing these ocunts to go to jury.

See: Griffith v. Shamrock Village 94 So. 854 (Fla. 1957) this Court found that an independent Tort is present, and that Tort is willful and malicious. Plaintiff may recover punitive damages without the breach of contract. Cited in accord with this finding is Winn & Lovett Grocery Co. Archer, 126 Fla. 308-, 171 So. 3214, 222 (1936). This case found "In order to recover punitive damages the tort must contain an element of "malicious motive or wrong intention, or circumstances of recklessness or gross negligence in conduct amounting to the same thing.

Also in Grifffith the Court stated that the Petitioner must demostrate an intentional wrong. "To do so, it is necessary to allege some general facts and circumstances consituting fraud, malice, gross negligence or oppression." The Court concluded that the Plaintiff met his burden by showing fraudulent inducement to enter the contract. Fraudulent inducement is an independent Tort on which the plaintiff may recover punitive damages. Id at 466-67

Banfield v. Addington 104 Fla. 661, 140 So. 893 (1973). This Court found extreme want of care or malicious breach of this implied duty may support an award for punitive damages. "This duty is not affected by the fact [that a party is] under a contract and may be liable on the Contract. The two duties are distinct". Also see Flint and Walling Mfg. Co. v. Becket, 167 Ind. 491 -, 79 N.E. 503, 506 (1906).

Ashland Oil, Inc. v. Pickard 269 So. 2d 714 (Fla 3d DCA 1972). This was an action for fraud in the inducement and breach of contract. Here the Fla. 3d DCA citing Associated Heavy Equipment School, Inc. v. Masiello 219 So. 2d 465 (Fla. 3d DCA 1969) said punitive damages are recoverable for anaction in deceit. The Court also allowed recovery for out-of-pocket expenses plus loss of profits, although acknowledging this would usually constitute double recovery. The Court will permit such double recovery...where plaintiff pursue an action for deceit and breach of contract.

"One who has been fraudulently induced into a contract may elect to stand by that contract and sue for damages for the fraud. Whgen this happens and the defrauding party also refuses to perform the contract as it stands, he commits a second wrong, and a separate and distinct cause of ac-

tion arises for the breach of contract. The same basic transaction give rise to distinct and independent causes of action which may be consecutively pursued to satisfaction. This, an action on a contract induced by fraud is not inconsistent with an action for damages for the deceit." The Third District allowed punitive damages based on the Tort claim of fraudulent inducement without any discussion of poof of entitlement to compensatory damages.

The Court then cited another cash that discusses an independent cause of action for intentional infliction of emotional distress as a result of insulting language in Korbin v. Berlin 177 So. 2d 551 (Fla 3d DCA 1965).

Woodbury v. Tampa Waterworks Co. 57 Fla. 243, 49 So. 566 (1909). The Florida Supreme Court held liability may be in contract or in Tort. The duties imposed on a public utility are "not mere contract obligations...liability for a Tort arises for the violation of a duty express or implied." Id. - 49 So. at 562.

Campbell v. Government Employees Ins. Co. So. 2d 232 (Fla. 2d DCA (Fla. 1974). Here the Fla. Supreme Court allowed punitive damages because of the insurer's conduct involved concealment, misrepresentation and "continued course of dishonest dealing."

STAMPED

THE FLORIDA BAR STAMPED

May 6, 1991

THE FLORIDA BAR
INQUIRY/COMPLAINT FORM

Please carefully review this inquiry/complaint form once you have included all information. Note that there is a requirement for you to execute the oath at the end of this form and that the oath must be administered by a notary public or any other officer authorized to administer oaths in your jurisdiction. False statements made in bad faith or with malice may subject you to civil or criminal liability. Further information may be found in the pamphlet "Complaint Against A Florida Lawyer?"

Your Name: John M. Stembridge **Attorney's Name**: Mark Mintz

Address 545 N.E. 125th Street **Address:** 1700 Sans Sourci Blvd.

City: N. Miami State: Florida **City:** N. Miami State:Florida

Telephone: 893-0800 **Telephone**: 893-5506

Zip Code: 33161 **Zip Code**: 33181

Is this your attorney ___yes/ X No. If not who is your attorney?

Name: Robert Korner

Address 4505 Flagler Street - Suite 200

City: Miami **State**: Florida **Zip Code** 33134 **Telephone**: 446-3587

DESCRIBE YOUR COMPLAINT, PROVIDE DATES AND FACTS OF ALLEGED MISCONDUCT

(Use a separate sheet if necessary. Do not write on the back of this form!)

Upon the advice of representatives from several branches of our government, I am filing this formal inquiry with the Florida Bar. Since I am not an

attorney and since, in my humble opinion, the incident caused my civil and constitutional rights to be abridged, I am asking the Bar's professional opinion of the incident. Also, because of this incident, the Defendant to this date has not personally been cross examined in front of the jury as has the Plaintiff - due to the Plaintiff's counts being stricken. My inquiry is this, do the following set of circumstances give rise to any problems as they relate to the rules regulating the Florida Bar, its Code or Cannons of Professional Ethics.

Under penalty of perjury, I declare the foregoing facts are true, correct & complete.

"s/ John M. Stembridge
Signature

Sworn to and subscribed before me this _____ day of _____ 19___

_____
Notary Public

My commission Expires
(stamped) Notary Public of Florida at large
My commission expires December 15, 1993
Bonded thru Huckleberry & Associates

RETURN TO THE FLORIDA BAR

The Incident

On December 3, 1985, a hearing was heard on Plaintiff's Third Amended Complaint before Judge Mario Goderich in John M. Stembridge Vs. Preferred Risk Mutual Insurance Co. Defendant (Gen. Jurisdiction Division Case No. 80-7272 CA20). In this complaint, drawn by Former Dade County Attorney Stuart Simon and Robert Korner, the Plaintiff alleged the bad faith torts of fraud, conversion, insurance codes and statutes violations, intentional infliction, of mental and emotional cruelty and loss of use of property. During this hearing on the Third Amended Complaint, Mark Mintz Attorney for the Defendant, with my attorney Robert Korner and myself present, stated to Judge Goderich that in Florida an insurance com-

pany can deny protection, be abusive and otherwise mistreat its policy holder and still only be liable for the policy amount. Regardless of my attorney's arguments to the contrary, Judge Goderich bought his argument and struck the Plaintiff's counts of fraud, conversion, insurance codes and statutes violations, intentional infliction of mental and emotional distress, and loss of use of property.

My inquiry is this: Did Mr. Mintz deliberately mislead the Judge concerning the law of Florida First, the Rules Regulating the Florida Bar State impari muteria:

Rules Regulating the Forida Bar

4-3 ADVOCATE

4-3.3 Candor toward the tribunal

(a) A lawyer shall not knowingly

(1) Make a false statement of material fact or law to a tribunal;

necessary to avoid assisting a criminal or fraudulent set by the client;

2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) Fail to disclose to the tribunal legal authority in

the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protectedbyrule 4-1.6

Representations by a Lawyer

An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepre-sentation. The obligation prescribed in rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with

Misleading legal argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required tomake a disinterested exposition of the law, but must, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises property applicable to the case.

Mr Mintz and the firm with which is associated represent insurance companies. Being an insurance attorney, Mr. Mintz was very much aware or should have been aware of the following cases when making such an erroneous statement to Judge Goderich.

The first case I'm citing could not have been more timely or apropos. For it was the same year Mr. Mintz's client issued its policy to the Plaintiff and one year before the Plaintiff's loss.

In Escambia Treating Co. vs. Aetna Casualty & Surety Co., 421 F. Supp. 1367 (N.O. Fla. 1976) the United States District Court for the Northern District of Florida explicitly held that under Florida law an insurer has the implied duty to proceed with good faith and deal fairly with its insured. Failure of that, the court held that a bad faith breach of that duty imposed liability based in tort.

Citing Burton V. Juzwik 524 p. 2d 16, 22 (Okla 1974) "The nature of the grievance rather than the form of the pleadings should be the deciding factor in whether or not the cause sounds ex delicto or ex contractu."

The court extended the doctrine adopted in Florida to include this situation.

When this case is Shepardized in the Shepard's Citator, it is cited in at least 23 or more cases in Florida and other jurisdictions. Mr. Mintz must have been aware of this case for the five years he was representing the defendant and possibly longer.

Secondly, two years before the Defendant issued its policy to the Plaintiff and three years before the Plaintiff's loss the Florida Supreme Court ruled in Campbell V. Government Employees Insurance Co. 306 So. 2d 525 (Fla. 1974) that because the insurer's conduct involved concealment and misrep-

resentation amounting to a "continued course of dishonest dealing," the defendant was subject to liability for punitive damages. The conduct included misrepresenting the seriousness of a claim and failure even to consider counter offers. Regarding punitive damages, the court noted that such damages have

"helped to maintain public tranquillity by permitting the wronged plaintiff to make his revenge in the courtroom and not by self help ... also, since compensatory damages do not always fully compensate, punitive damages have a 'general salutary effect' and are awarded to the injured party as a reward for his public service in bringing the wrong doer to account."

Thirdly, during the same year (1985) that Mr. Mintz misquoted the law to Judge Goderich, the T.D.S. Incorporated v. Shelby Mutual Insurance Co. 760 F. 2d 1520 (11th Cir. 1985) the Florida Courts did recognize the independent tort of fraud. In affirming the award of punitive damages, the Court of Appeals for the Eleventh Circuit declared that if the insurer is engaged in dishonest conduct constituting a tort separate and distinct from the insurance contract sued upon, "then exemplary damages were recoverable." Moreover the Shelby Court rejected the insurer's contention that the independent tort sued upon must have caused the breach of insurance contract on the actual denial of a first party claim.

Fourthly, also in the same year (1985), in First Interstate Development Corp. v. Abanedo, 476 So. 2nd 692 (Fla. 5th DCA, 1985), the Court held that punitive damages may be recovered if the Plaintiff demonstrates that the defendant acted outrageously, or where the tortious act complained of is fraudulent.

Fifthly, in Singleton v. Foreman 435 F. 2d 962 (5th Cir. 1970) the Fifth Circuit acknowledged that a course of action exists in Florida for insulting and abusive language resulting in mental distress. Because Foreman's alleged conduct constituted an independent tort, and because Foreman's oppressive behavior manifested great indifference to the rights of others, punitive damages were possible. Therefore, Mrs. Singleton was entitled to the opportunity to prove the case. Here the Fifth Circuit chose to allow punitive damages under the tort claim of insulting and abusive language resulting in emotional distress, without discussing the necessary elements for such actions.

Federal Rules Civ. Proc. Rule 11, 28 U.S.C.A.

In the current Federal Reporter, 2d Series, the following cases are cited regarding Rule 11. In Johnson vs. Volusia County cite as 846 F. 2d 1358 (11th Cir. 1988)

"The appellants purported to describe the law to the district court in the hope that the description would guide and inform the court's decision. With apparently studied care, however, they withheld the fact that the long awaited decision by the Supreme Court of Florida had been handed down. This will not do. The appellants are not redeemed by the fact that opposing counsel subsequently cited the controlling precedent. The appellants had a duty to refrain from affirmatively misleading the court as to the state of the law."

Also in Borowski v. DePuy, Inc. cite as 850 F. 2d 297 (7th Cir. 1988)

Imposition of Rule 11 sanctions was warranted based on counsel's "ostrich-like tactic of pretending that potentially despositive authority against party's contention did not exist, misstating applicable law, and failing to provide factual predicate for one of the claims. Fed. Rules Civ. Proc. Rule 11 28 U.S.C.A.

These are only a few cases that I've been able to present for your consideration and opinion concerning Mr. Mintz's statements to the court. I am not able to know whether Mr. Mintz's motives were to deliberately mislead the judge, but under the law I am entitled to inquire whether his deliberately misquoting the law gives rise to a problem for him and his client before the Florida Bar and Courts.

Sincerely,

John M. Stembridge

cc Attorneys for the Defendant

Mark Mintz

Keith Trupman

Attorneys for the Plaintiff

Byrd Duke

Robert Korner

Stuart Simon

Sam Holland

Howard Neu

Legal Divisions

State Insurance Commissioner

State Attorney General

Governor's Office
U.S. Attorney General
Federal Bureau of Investigations

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN
AND FOR DADE COUNTY,
FLORIDA
GENERAL JURISDICTION
DIVISION

CASE NO. 80-7272 CA 20

JOHN M. STEMBRIDGE,
PLAINTIFF,
vs.

PREFERRED RISK MUTUAL
INSURANCE COMPANY,
DEFENDANT.

DEFENDANT'S ANSWER AND
TO PLAINTIFF'S THIRD
AMENDED COMPLAIN
Florida Bar No. 305707

COMES NOW the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY by and through their undersigned attorneys and files their Answer and Affirmative Defenses to the Plaintiff's Third Amended Complaint and states:

The Defendant denies each and every paragraph and allegation contained in the Plaintiff's Third Amended Complaint separately and severally and demands strict proof thereof.

By way of separate Affirmative Defenses, the Defendant states as follows:

1.The policy of insurance sued upon is void pursuant to Florida Statute 627.409, in that the insured made misrepresentations, omissions, concealment of the facts and incorrect statements in his application which were wither (a) fraudulent, (b) material to the acceptance of the risk and/or hazard assumed by the insurer, or (c) the insurer in good faith would either not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been known to the insurer as required either by the application for the policy or contract or otherwise. These misrepresentations include but are not limited to the value, descrip-

tion, condition, type and number of building located on the insured premises.

2.The limit of liability pursuant to the policy insurance sued upon cannot exceed the actual cash value of the property insured. Repair or replacement

3.The Plaintiff has failed to comply with policy provisions in the policy herein in regard to production of documents and proper substantiation of his claim, and thus PREFERRED RISK MUTUAL INSURANCE COMPANY has been unable to evaluate the total amount of any actual loss, and therefore no obligation to pay has arisen. Builder Estimates

4.The Plaintiff's claim is limited by the terms and conditions of the policy of insurance sued upon.

5.Any recovery of the Plaintiff is limited by the applicable deductible of the insurance policy herein, which is $100.00 per structure or dwelling and $100.00 per occurrence.

6 In regard to the loss claimed, the insurance policy sued upon is void or rescinded because the Plaintiff is guilty of willful concealment and/or misrepresentation of material facts or circumstances concerning the insurance and/or the Plaintiff has engaged in fraud and false swearing to PREFERRED RISK MUTUAL INSURANCE COMPANY in regard to the insurance and the claim herein, and thus is in breach of the policy and Florida law.

7.The insurance policy sued upon is void or rescinded because the Plaintiff willfully misrepresented the value of the insured property during this statements to PREFERRED RISK MUTUAL INSURANCE COMPANY.

8.The insured made specific false statements in regard to the amount of the loss herein and how the loss occurred, and therefore the policy of insurance sued upon is void or rescinded.

9.The Plaintiff, either before or after the claimed loss, willfully concealed or misrepresented a material fact or circumstance concerning this insurance, including damage, and/or the Plaintiff engaged in false swearing relating to this insurance, including damage, and thus, as a matter of law, the Plaintiff cannot recover.

10.The Plaintiff knowingly and willfully made a false answer or concealment concerning some matter of fact as to which he knew or was apprised was material to the inquiry being made by PREFERRED RISK MUTUAL INSURANCE COMPANY and therefore, as a matter of law, he cannot recover.

11.Attached hereto as Exhibit "A" is a copy of the portion of the subject insurance policy setting forth in Lines 90 through 122 of said Exhibit the requirements on the part of the insured in case loss occurs and performance of which are conditions precedent to relief under the subject policy. The insurance policy has been rendered void by virtue of the Plaintiff's failure to perform or comply with the requirements of Line 90 through 113 and including but not limited to the fact that Plaintiff has failed to submit an inventory and proof of loss as required thereby.

12.The Plaintiff has failed to comply with the requirements relating to submission to examinations under oath and that the Plaintiff has refused to allow his statement under oath to be taken. On April 17, 1980, prior to the filing of this lawsuit, the Defendant requested an oral examination of the Plaintiff pursuant to the policy and that the Plaintiff refused and filed suit against the Defendant. Said requirement is a condition precedent to suit or payment on this loss.

13.Pursuant to the terms and conditions of the policy of insurance sued upon, the Defendant is not responsible for any loss herein since the buildings in this case were vacant or unoccupied for a period of 30 or more consecutive days immediately preceeding the loss.

14.Pursuant to the terms and conditions of the policy of insurance sued upon, the instant loss is not covered because of neglect of the insured to use all reasonable means to save and preserve the property at and after the loss, or when the property was endangered by fire in neighboring premises.

WHEREFORE, the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, moves the Honorable Court to dismiss the Plaintiff's Third Amended Complaint and demands trial by jury of all issues triable as of right by a jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to Bruce W. Bennett, Esquire, Attorney for Plaintiff, Kimbrell & Hamann, P.A., Suite 900, Brickell Centre, 799 Brickell Plaza, Miami, Florida, 33131, this 29th day of April, 1987.

RESS, GOMEZ, ROSENBERT,
HOWLAND & MINTZ, P.A.
Attorneys for Defendant
1700 Sans Souci Boulevard
North Miami, Florida 33161
Telephone: 893-5506
By: Mark J. Mintz_

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO.: 80-7272 CA 20

JOHN M. STEMBRIDGE, Plaintiff, v. PREFERRED RISK MUTUAL INSURANCE CO. Defendant.	:	ORDER DISMISSING COUNTS II, III, IV AND V OF THIRD AMENDED COM- PLAINT AND DIS- MISSING PUNITIVE DAMAGE CLAIM

THIS CAUSE came on to be heard on December 3, 1985, upon the Defendant's Motion to Dismiss Third Amended Complaint on several grounds and this Court having heard arguments of counsel and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED as follows:

1. The Court has been advised by Plaintiff's counsel that Count I of the Plaintiff's Third Amended Complaint is a Count for simple breach of contract and therefore, the Defendant's Motion to Dismiss Count I be and the same is hereby denied.

2. The Defendant's Motion to Dismiss Counts II, III, IV and V, be and the same is hereby granted. As a part thereof, the Defendant's Motion to Dismiss and Strike the punitive damage claims in Counts II and IV is granted.

3. The Defendant shall have thirty (30) days from the date of this Order in which to file an Answer and Affirmative Defenses to the Plaintiff's Third Amended Complaint.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 27 day of Dec., 1985.

(Stamped)
Mario P. Goderich
CIRCUIT JUDGE

Copies provided to:
Mark J. Mintz, Esq.
Robert D. Korner, Esq.

From U. Miami Law Review Vol. 32:1233 1259-1262 1978

VII "Tort of Insurer's Bad Faith"

In recognizing that an insurer has an implied duty under its contract of insurance to deal fairly and in good faith with its insured, the United States District Court for the Northern District of Florida, in *Escambia Treating Co.* v. *Aetna Casualty & Surety Co.*[140] expanded the insurer's liability for bad faith. It concluded that, under Florida law, an insurer is tortiously liable for wrongfully refusing to pay the valid claims of its insured.[141]

Underlying the decision in *Escambia* is a progressive willingness in Florida and in a growing number of other jurisdictions to provide a tort remedy for an insurer's bad faith refusal to honor the reasonable expectations of its insured under the insurance contract.[142]

In determining that Florida would recognize a cause of action for the breach of an implied duty arising from the insurance contract to deal fairly and in good faith with its insured in the processing and payment of the insured's claims, the *Escambia* court relied upon the rationale developed by the California courts in *Fletcher v. Western Natural Life Insurance*.[143] and *Gruenberg v. Aetna Insurance Co.* [144]Since these decisions, California has achieved recognition as the leading jurisdiction for permitting recovery, in tort, where an insurer breaches its duty to deal fairly and in good faith.[145] In *Gruenberg* the Supreme Court of California articulated its analysis of an "emerging cause of action" which the *Escambia* court acknowledged as "reflect[ing] the policy or concept that an insured purchases insurance and not an unjustified court battle when he enters the insurance contract."[146]

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140 421 F Supp. 1367 (N.D. Fla. 1976)

141 Id at 1368. In *Escambia*, the district court's jurisdiction was predicated upon diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332 (1970). Although Florida substantive law was controlling, the legal issue presented in *Escambia* pertained to law on which Florida courts had not ruled. In such an instance, the task of the district court is to determine how the Florida courts would pass on the issue if it were before them.

142 See Eckenrode v. Life of Am. Ins. Co. 470 F.2d 1 (7th Cir. 1972); United Serv. Auto Ass'n v Wesley 526 P.2d 28 (Alas. 1974); Silbert v. California Life Ins. Co., 11 Cal 3d 452, 521 P.2d 1103, 113 Cal. Rptr. 711 (1974); Gruenberg v. Aetna Ins. Co., 9 Cal. 3d 556, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973); Fletcher v. Western Nat'l Life Ins., 10 Cal. App. 3d 376, 89 Cal. Rptr 3d 376. 89 Cal. Rptr 78 Ct. App. 1970); Ledingham v. Blue Cross Plan for Hosp. Care of Hosp. Serv. Corp. 29 Ill. App. 3d 339, 330 N.E. 2d 540 (App. Ct. 1975) *rev'd in part*, 64 Ill. 2d 338, 356 N. E. 2d 75 (1975); Citizens Discount & Inv. Corp. v Dixon, 499 S.W. 2d 231 (Mo. Ct. App. 1973).

143 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (Ct. App. 1970).

144 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973).

145 421 F. Supp. at 1369.

146 *Id*

The supreme court stated:

> It is the obligation, deemed to be imposed by the law, under which the insurer must act fairly and in good faith in discharging its contractus responsibilities. Where in so doing, it fails to deal fairly and in good faith with its insured by refusing, without proper cause, to compensate its insured for a loss covered by the policy, such conduct may give rise to a cause of action in tort for breach of an implied covenant of good faith and fair dealing. . . . It is manifest . . . that in every insurance contract there is an implied covenant of good faith and fair dealing. The duty to so act is imminent in the contract whether the company is attending to the claims of third persons against the insured or the claims of the insured.
>
> [W]hen the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability in tort.[147]

Following the *Gruenberg* rationale that the duty to act fairly and in good faith in the processing and payment of the legitimate claims of its insured is a different aspect of the insurer's existing duty to deal fairly and in good faith in accepting reasonable settlement offers, the *Escambia* court reasoned: "Florida courts have clearly recognized the insurer's duty to act in good faith and accept reasonable settlement. . . . Logically, the Florida courts would also accept the 'aspect of the same duty' requiring the insurer to act fairly and in good faith in handling the claims of its own insured."[148] In addition, the federal district court noted that in an action for breach of the implied duty, a "plaintiff. . . may recover compensatory, and in the proper case punitive, damages in accordance with existing Florida law."[149]

The Florida courts have not hesitated to impose judgments in excess of policy limits against insurers who have failed to act in good faith in accepting reasonable offers.[150] This aspect of the duty was first recognized by the Supreme Court of Florida in *Campbell v. Government Employees Insurance Co.*[151] In that case, the court upheld both the existence of the implied duty and an award of punitive damages for its breach.

In *Butchikas v. Travelers Indemnity Co.*,[152] the Supreme Court of Florida qualified the Campbell result in cases involving insurer confeasance by refusing to allow punitive damages and damages for mental anguish.[153] Viewing the nonfeasance situation as "less egregious than these involving

147 Gruenberg v. Aetna Ins. Co., 9 Cal. 3d at 574-75, 510 P.2d at 1037-38, 108 Cal. Rptr. 485-86.

148 421 F. Supp. at 1370

149 *Id* at 1371

150 *See, e.g.*, Campbell v. Government Employees Ins. Co., 306 So. 2d 525 (Fla. 1975); Thompson v. Commerical Union Ins. Co., 250 So. 2d 259 (Fla. 1st Dist. 1970).

151 306 So. 2d 525 (Fla. 1975).

152 343 So. 2d 816 (Fla. 1976).

deliberate, overt and dishonest dealing."[154] The court held that an aggrieved insured was made amply whole through a compensatory award and recovery of attorney's fee. The thrust of these cases appears clear: "Tort liability does not result from the mere assertion of a weak and ultimately insufficient defense by the insurance company. The refusal to pay the insured's claim must be unreasonable and in bad faith."[155]

---

153 *Id* at 818. The court noted that its independent research was unproductive of precedent supporting an award of compensation for mental anguish in an "excess" case. The rule in Florida has been that, absent a physical injury, a plaintiff can recover damages for mental anguish only where it is shown the defendant acted with such malice that punitive damages would be justified." *Id.* at 819. *See also* Crane v. Loftin, 70 So. 2d 574 (Fla. 1954).

154 343 So. 2d at 818.

155 55 Escambia Treating Co. v. Aetna Cas. & Sur. Co., 421 F. Supp. 1367, 1370 (N.D. Fla. 1976)

(letterhead)

UNITED STATES SENATE
Committee on The Judiciary
Washington, DC 20510-8275

Joseph R. Biden, Jr. Delaware, Chairman

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Cynthia C. Hogan, Chief Counsel
Catherine M. Russell, Staff Director
Mark R. Disler, Minority Staff Director
Sharon Prost, Minority Chief Counsel

May 7, 1993

Mr. John M. Stembridge
545 North East 125th Street
North Miami, Florida 33161

Dear Mr. Stembridge:

Thank you for your letter regarding your complaint against the Dade County court. I appreciate hearing from you.

The Judiciary Committee does not handle complaints against state courts. If you wish to file a grievance against a state court, however, you should contact:

Judicial Qualifications Commission
Historic Capital Building, Room 102
Tallahassee, Florida 32399-6000

Thank you again for your letter. I hope this information will be helpful to you.

Sincerely,

"s/____

Joseph R. Biden, Jr.
Chairman

December 18, 1990

The Honorable Anthony M. Kennedy
Justice, United States Supreme Court
Washington, DC 20543

Dear Justice Kennedy:

Shalom and holiday greetings to you, your family and to all the member of the Court, their families and staffs.

Your Honor, enclosed is my application for extension of time to file a petition for Writ of Certiorari.

My father and mother named me after President James Madison, father of our Constitution and author of our Bill of Rights. It was my honor to be in Constitution Hall in Philadelphia during the 200th Anniversary of our Constitution. Also, to see the exhibition "Miracle at Philadelphia" which was a direct quote from George Washington who did not believe that our early fathers could ever agree on a unifying document such as our constitution. In the same light, this petitioner against such similar odds is hoping for another miracle, only this one a modern day, "Miracle at Washington, DC," our nation's capital.

The reason that I have persisted in this case, that many lawyers and judges have considered too small and insignificant for them to be bothered, is my overwhelming belief that the poorest and most helpless in our nation have a right to be protected by the courts of our land from fraud and abuse.

As you and all judges know, the American insurance industry is licensed to act as a Public Trust and in good faith to protect the American public from calamity. That's how the saying came to pass, "God forbid that you have a calamity and have no protection."

In my case, it will have to be changed to "even by paying excessively high premiums for protection, you have no protection when calamity strikes." Without question, this is a violation of all the congressional and legislative laws of our land as well as the "Bill of Rights."

One of the jurors during the trial in 1987, was the Captain of the ship "Mutiny on the Bounty" used in the film with Marlon Brando. He told us afterwards, that in his opinion, "you were paying for protection and deserved it at the time of loss - not 10 years later."

Sincerely,

John M. Stembridge

(Letterhead)

Stembridge Furniture
Successfully Furnishing South
Florida Homes Thirty Seven Years

December 20, 1990

Mr. George Bush, President
United States of America
The White House
Washington, D.C. 20500

Dear Mr. President:

Shalom, happy holidays, a healthy peaceful 1991 to you, America, the Middle East and world. Mr. President, you can be assured that you are in my prayers and those of millions around the world. We are asking God to guide you in the days ahead in all your decisions to protect the Middle East and the World from war and the death and destruction which it brings.

No issue before the world is more important than making peace between Israel and her neighbors. No piece of real estate in the world is more important than the Temple Mount. It must be free for worship to the Jews and Christians of the world as well as to the Moslems.

In order to bring the Middle East into the Twenty-first century, a bill of rights will have to be implemented to protect all its people from the whims of greedy, selfish dictators. Instead of the shouts of "Death to Israel and America," all people in the world have to be taught to respect the life and property of everyone else.

As you know, Mr. President, I am one of the candidates who ran for Claude Pepper's seat last year. I'm also, the one who organized the "Miracle Mission of Mercy to Moscow in behalf of Soviet Jewry," in December 1985 in which you, President Reagan, Senate Majority leader, Senator Mitchell and House Foreign Affairs Committee Chairman, Congressman Fascell were all very much aware and involved.

More recently, I was the organizer of "Aliyah's First Annual Feast of Trumpets Celebration in Jerusalem" this past September. Until this date, I continue to struggle in behalf of peace between the seeds of Ishmael and Israel.

Sincerely,

"s_____"

John M. Stembridge

(letterhead)
Law Offices
RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ,P.A.
1700 Sans Souci Boulevard
North Miami, Florida 33181

Lewis M. Ress
Roland M. Gomez
Sheldon Rosenberg
David R. Howland
Mark J. Mintz
Steven A. Edelstein
Jeffrey C. Fox
Keith A. Truppman
Gerald E. Deckelbaum

George W. Kates
of Counsel

Telephone 893-5508
Area Code 305
Broward Line 524-5202

February 27, 1987

Robert K. Korner, Esquire
4790 Tamiami Trail
Coral Gables, Fl. 33134

RE: Stembridge v. Preferred Risk Mutual Insurance Co.
Case No. : 80-7272 CA 20

Dear Mr. Korner:

I reviewed my file on this matter. The last offer to settle all pending claims including attorneys' fees, derivative claims, etc., was $12,000. Please accept this letter as an increased offer of $15,001.00 to settle all pending claims between the parties, attorneys' fees, costs, interest and any bad faith or derivative claims.

Please consider this letter a formal offer under the Florida Rules of Civil Procedure which is not admissible in any action, except in regard to proceedings to tax costs. I am sure that you will advise your client that if he does not get more than $15,000 for this case, Preferred Risk will tax costs against him, which in this case may be substantial.

This offer is good only until Monday, March 2, 1987 at 12:00 noon.

I thank you for your kind cooperation in this matter.

Very truly yours,
RESS, GOMEZ, ROSENBERG,
HOWLAND & MINTZ, P.A.
"s/___ Mark J. Mintz

MJM/fmm

3-7-87

(Note by typist: This document was hand printed in upper case, and marked thus.)

TO JOHN STEMBRIDGE

CONTINUING OUR CONVERSATION OF YESTERDAY & TODAY, I AM ADVISING YOU THAT I AM CERTAIN THAT YOUR CASE (SO - 7272) WILL BE DISMISSED AT 9:00 AM ON THURS, MARCH 12, 1987 FOR LACK OF PROSECUTION. I WILL ATTEND THAT HEARING ON YOUR BEHALF. YOU HAVE THE OPPORTUNITY TO SETTLE YOUR CASE AGAINST PREFERRED RISK MUTUAL FOR $15,001.00 PROVIDED YOU AUTHORIZE ME TO DO SO NO LATTER THAN 2 PM, WED. MARCH 11, 1987. I CAN NOT GUARANTEE THAT SHOULD YOU DECIDE TO SETTLE & NOTIFY ME AFTER 3 PM, WED. MAR. 11, 1987 THAT I CAN ACCOMPLISH THE SETTLEMENT BEFORE THE 9:00 AM HEARING ON MARCH 12, 1987, ONLY THAT I WOULD TRY.

I AGREE THAT IF YOU CHOOSE TO SETTLE AT THE $15,001.00 FIGURE THAT YOUR AUTHORIZATION TO SETTLE WILL NOT PREJUDICE YOUR CLAIM AGAINST ME FOR THE WAY I HANDLED YOUR CASE. THE $15,001.00 WILL REDUCE ANY LIABILITY THAT I HAVE TOWARDS YOU BY THAT AMOUNT.

IT IS NECESSARY FOR ME TO HAVE WRITTEN AUTHORIZATION IN HAND IN ORDER TO SETTLE AS OUTLINED ABOVE. YOU MAY SIGN A COPY OF THIS LETTER IN THE MANNER INDICATED & RETURN IT TO THIS OFFICE AS OUTLINED ABOVE TO ACCOMPLISH THIS SETTLEMENT -

Very Truly Yours,

"s Robert D. Korner

I HEREBY AUTHORIZE ROBERT D. KORNER TO SETTLE MY CASE AGAINST PREFERRED RISK MUTUAL (SO - 7272) FOR $15,001.00. THIS AUTHORIZATION IS WITHOUT PREJUDICE TO ANY CLAIM I HAVE AGAINST ROBERT D. KORNER, BUT WILL REDUCE ROBERT D. KORNER'S LIABILITY TO ME BY $15,001.00.

_____

JOHN M. STEMBRIDGE

DATE; MARCH ___, 1987

(letterhead)
Robert D. Korner
Attorney at Law
3211 Ponce de Leon Boulevard, Suite #204
Coral Gables, Florida 33146

Robert D. Korner

March 13, 1987

Mr. John Stembridge
545 Northeast 125 Street
North Miami, FL 33161

Re: Stembridge vs. Preferred Risk Mutual
Case No. 80-7272-CA-20

Dear John:

Enclosed is a copy of my Verified Motion. The original was filed with the Court Clerk and a copy was hand delivered to Judge Salmon.

I don't mean to sound like a broken record but I feel compelled to repeat my advise to you of the past week once again.

-You should settle with the Insurance Company for the $15,000.00 offered.

-Said settlement, will be without prejudice to your claim, if any, against me.

-If you persist in your refusal to settle, I feel certain that the case will be dismissed and you will have lost the $15,000.00 and you may become liable for the insurance company's costs.

Please reconsider your decision before it is too late.

Very truly yours,

Robert D. Korner

RDK:dls
Enclosure

Robert D. Korner
Attorney at Law
(letterhead)
3211 Ponce de Leon Boulevard, Suite #204
Coral Gables, Florida 33146

Robert D. Korner

March 16, 1987

Mr. John Stembridge
545 Northeast 125 Street
North Miami, Fl 33161

Re: John Stembridge vs
Preferred Risk Mutual Insurance
Case No. 80-7272 (20)
Our File No. 789-2698-81

Dear Mr. Stembridge:

I acknowledge your verbal authorization to settle your claim against Preferred Risk Mutual Insurance Company for $15,001.00 and I commend you for making a wise and judicious decision.

Upon receipt of your written authorization I will proceed with the paperwork necessary to conclude the matter and obtain your funds in the amount of $15,001.00.

By this letter I am terminating my representation of you in all legal matters. You are now free to obtain the services of whomever you choose.

I withdraw my offer of settlement in the above subject matter. Your demand exceeds both what I am able to do and also what I believe you are entitled to receive.

Your repeated references to bringing a suit against me belies your assurances to me that you want to settle our differences fairly and amiably.

Very truly yours,

"s/____

Robert D. Korner

RDK:dls

(Letterhead)
Robert D. Korner
Attorney at Law
3211 Ponce de Leon Boulevard, Suite #204
Coral Gables, Florida 33146

Robert D. Korner

March 17, 1987

Mr. John Stembridge
545 Northeast 125 Street
North Miami, Fl 33161

Re: John Stembridge vs
Preferred Risk Mutual Insurance
Case No. 80-7272 (20)
Our File No. 789-2698-81

Dear Mr. Stembridge:

You choose to reject the insurance company's offer of settlement in the amount of $15,001.00 in spite of my advice to the contrary and notwithstanding the fact that you verbally authorized me to settle at that figure.

Based upon your verbal authorization to me and your assurance that you were signing the authorization provided to you a week ago Friday and that you were mailing that authorization to me immediately, I proceeded with this settlement. In your call to my home last night you expressed that you would not settle and that because you had not signed any authorization to settle that you were free not to settle. You apparently do not consider yourself bound by your verbal authorization or representations to me.

You instructed me to let the judge rule which I have done. I am pleased to report that the matter is not dismissed and you are given an opportunity to proceed in court to resolve the matter. Please employ the attorney of your choice to prosecute this matter to conclusion.

I call your attention to the third and fourth paragraphs of my March 16th letter to you. My representation of you is terminated and my offer of settlement remains withdrawn.

Sincerely,

Robert D. Korner

RDK:dls

(on letterhead)
STEMBRIDGE
Furniture
"We Care About Your Home"

April 28, 1987

Robert Korner, Esq.
4790 S.W. 8th Street
Miami, Fl. 33134

Dear Bob:

This letter is to acknowledge receipt of your letters of March 16th and 17th and the general release which you wanted me to sign releasing you from any damages which I may have sustained due to any negligence of your handling my case since 1981.

Regarding the release, upon advice from counsel, I was advised not to sign a release for you until all matters are resolved. Regarding your letters, thank God He did not allow me to sign your release for Preferred Risk. For little did I know that you would withdraw your $40,000.00 offer of settlement. That had to be a sovereign act of God which prevented me signing that paper that night. Please understand it was never my intent to seek recovery from you. That only came about when you said that you were guilty of malpractice in the way you handled my case. Hopefully for both us, Bob, my attorneys will be able to obtain full recovery from Preferred Risk.

Sincerely,

John M. Stembridge

(on letterhead)
Stembridge Furniture
"We Care About Your Home"

March 13, 1987
Honorable Michael H. Salmon
Judge, 11th Circuit Court
Dade Count Court House
73 W. Flagler St,
Miami, Fla.

FILED

May 13, 1987

Richard P. Brinker, Clerk
Circuit and County Courts

Dear Judge Salmon:

RE: Stembridge vs. Preferred Risk Mutual Insurance Company
Case No.: 80-7272 CA-20

Your honor, I am asking you in the name of fairness and justice to allow me to continue my just claim against my insurer, Preferred Risk Mutual Insurance Co. and not to penalize me because of the negligence of my attorney upon whom I have had to rely to represent me since I am not a licensed attorney to practice law in the State of Florida.

With your permission, I will obtain new counsel who will give you and myself his assurance of moving this case forward expeditiously to its fair and just conclusion in the courts of our land.

Thank you, your honor, for your understanding and hopefully for granting this request.

Sincerely,

"s/_____
John M. Stembridge
Preferred Risk Insured

(handwritten:)
Rec. Copy 3-13-87
Helen Shur

JMS/edm

cc: Bill Gunter, State of Fla. Insurance Commissioner
Richard P. Brinker, Clerk of Circuit Court
Robert D. Korner, Attorney for Plaintiff
Mark J. Mintz, Attorney for Defendent

STEMBRIDGE
Furniture
(letterhead)

September 28, 1987

W. Sam Holland, Esq.
Kimbrell & Hamann - Suite 900
Brickell Centre
799 Brickell Plaza
Miami, Florida 33131-2805

Re: Case # 8O-7272 Division 20

Dear Sam,

February 27, 1987, Mark Mintz, attorney for Preferred Risk, sent Bob Korner, my attorney at the time, an offer to settle "all pending claims between parties, attorney's fees, cost, interest, and any bad faith or derivative claims". This offer was made after they thought Bob had committed malpractice regarding my case.

Bob Korner, an attorney friend of his, and Keith Truppman with Mark's firm, all urged me at the courthouse on March 1987 to accept this offer because they were positive that Judge Salmon would dismiss my case for lack of prosecution. In addition to their offer, Bob offered to pay me $40,000.00 himself if I did not sue him.

I was almost convinced by them that, because of Bob's negligence, I had no recourse to recover any of my losses from Preferred Risk and was about to sign. Before signing, however, I re-read Mark's offer. It said to settle not only attorney's fees, costs and interest, but more importantly, "any bad faith or derivative claims".

When I re-read those last words - that by signing this offer I would be releasing Preferred Risk from "any bad faith or derivative claims" - I could not sign it. If "bad faith and its derivative claims" were not the very essence of my case, why was it so important to Mark's client that I release them from those claims by signing his offer? The answer is obvious.

When I heard that some of my tenants had painted a swastika on a neighbor's front door and defaced his lawn and property when they erroneously thought that he had called the police on them for playing loud music while having a barbecue outdoors at 5 A.M. one Sunday, I was angry and did what any other rational owner would have done under the circumstances. I started sending eviction notices to those involved. Afterwards, the series of acts of vandalism and fire were perpetrated upon my property.

When these acts occurred, all the units were rented and under lease. As a result of Preferred Risk's actions, I lost the buildings plus the rents which I

was dependent upon to make the mortgage payments. Home Federal and Portner and Portner, both in Hollywood, started foreclosure actions against me because I could not make their payments. My business was drastically affected. Trips, phone calls, conferences outside my business, mental, emotional stress, and shame because of not being able to meet all my obligations, all compounded the losses. I closed my store on 79th Street in 1977 and my store in Hollywood in 1979. At present it doesn't look too good for my remaining store, due to all the above turmoil since March, having to obtain new counsel, preparing for trial, etc.

Although Preferred Risk placed a low value of $30,000.00 on seven buildings with nine united in them, one building was CRS and six were frame. (Their agent erroneously insured it as one frame building with nine family units in it.) Their adjuster, Jack Markham, during his deposition along with Mark Mintz, said that there was no insurance on the CBS building, which means that I had no protection on it due to their errors in insuring all of my property properly. Then, when I had a just claim and needed the protection from them, they callously turned their backs and refused any help. By their tortful actions, they injured me far more than the vandals.

Throughout this case Preferred Risk has tried to cloud this issue by raising false issues of age and condition of the buildings, value, etc., to cover their own errors and their appointed agents; acts of bad faith in willfully and wantonly refusing to repair or pay me the $30,000.00 to repair what I could. As my witnesses will testify on the stand, at all times the value of and damages to my property easily exceeded the $30,000.00 limit which Preferred Risk placed upon them.

I need a champion law firm that will fight for my right to full recovery of my losses more than Mark Mintz is fighting to protect Preferred Risk from having to pay for the errors and bad faith actions of their agents.

I need to know now, with trial October 19th, if you and your firm are committed to this end. I have personally supplied you with (1) "Payment Refused", a revealing courtroom expose "of Insurance Bad Faith" by William M. Shernoff, and (2) "Punitive Damages for Breach of Contract: A New Approach" by Phyllis Coleman (Nova University), plus numerous other cases on Torts, etc., for Bad Faith. Certainly these should be more than enough Florida law to help win full recovery of my losses.

So far it appears that my losses and suffering are a joke to Preferred Risk and their agents, but it has been ten long years of hurt for me to endure.

Awaiting your positive response,

"s/_____

John M. Stembridge

JMS/cldp

cc: Gerald T. Wetherington, Chief Judge
Michael H. Salmon, Circuit Court Judge
Mark Mintz, Esq.
Bruce Bennett, Esq.
Guy Bailey, Esq.
Robert Korner, Esq.
Byrd Duke, Esq.
Ed Winter, Esq.
Bill Gunter, State Insurance Commissioner
Walter Dartland, State Attorney General's Office
Department of Legal Affairs
Chairman of the Board, Preferred Risk Mutual
Insurance Co.
Chief Executive Officer, Preferred Risk Mutual
Insurance Co.

(Letterhead:) **Stembridge Furniture**
"We Care About Your Home"

September 19, 1988

Mr. Sam Holland
Kimbrell & Hamann, P.A.
Suite 900, Brickell Centre
799 Brickell Plaza
Miami, Florida 33131-2805
Dear Sam,

I am saddened at the lack of professional interest with which your firm has pursued my case.

First, as we have discussed from the beginning, there are serious and pertinent facts concerning my case which the jury has not been allowed to hear. Under the Constitution of the United States our judicial system is not allowed to obstruct justice, but at some point must allow all the facts of a case to be heard before a jury of our peers.

Second, as my attorney, it is your responsibility to diligently see that all the facts are presented fully and accurately to the jury.

Third, you have not discussed with me any of your plans for the appeal of my case. Diligence in the pursuit of justice is always essential. Surely, you're not asleep at the switch while the other side continues to sow tares in an effort to cloud the issues again. I need to know now your positions and preparations concerning my case.

Fourth, your firm does not keep me appraised in a timely fashion, of all the negotiations which take place between you and Preferred Risk.

Fifth, it will soon be one year since the jury ruled; yet no final judgment has been entered.

Sixth, do not under estimate the seriousness of these matters.

Seventh, I will be awaiting your timely response.

Sincerely,

"s/_"
John M. Stembridge

JMS:hp

John M. Stembridge
545 N. E. 125th Street
North Miami, Florida 33161
Telephone: (305) 893-0800
Fax: (305) 893-0654

October 12, 1995

Richard M. Gomez

8100 Oak Lane

Suite 400

Miami Lakes, Florida 33016

RE: STEMBRIDGE vs. KORNER, MINTZ, PREFERRED RISK, etc., et al., Dade County Cuicuit Court Case No. 92-13319 CA 20

Dear Mr. Gomez:

Regarding your letter dated 9/28/95, RE: Stembridge vs. Preferred Risk, etc., et al., I checked with Judge Postman's legal assistant Ms. Margie Cruz about your inquiry to her. She stated that she never told you to disregard the Court Order for Jury Trial. As you and your Client are well aware, this case is still at issue therefore the court has correctly set the date for jury trial. Should your client desire to settle this matter before that date, I am willing to meet with you to discuss settlement terms.

Sincerely,

"s_____"

John M. Stembridge

Cc: Ms. Margie Cruz, Legal Assistant to Judge Alan Postman
11th Judicial Circuit – Dade County, Florida
Case NO. 92-13319 CA 20

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT JANUARY TERM, A.D. 1995

JOHN M. STEMBRIDGE **
Appellant **
Vs. ** CASE NO. 93-120
MARK M. MINTZ **
Appellee **

Opinion filed March 22, 1995.

An appeal from a non-final order of the Circuit Court for Dade County, Jon I. Gordon, Judge.

Rubin, Rubin & Rubin, and Eric J. Miller, for appellant.

Ress, Mintz & Truppman and Keith A. Truppman, for appellee.

Before HUBBART, COPE and LEVY, JJ.

COPE, Judge

Defendant-appellant John M. Stembridge appeals a partial summary judgment on liability in favor of plaintiff-appellee Mark M. Mintz. We reverse.

In 1980 Stembridge was the plaintiff in an action against his insurance company following a fire in a building owned by Stembridge (the "Insurance Action"). Mark J. Mintz was counsel for the insurance company. Although the verdict in that case was in Stembridge's favor, he was unhappy with the result and appealed the matter to this court, which affirmed the judgment. Stembridge v. preferred Risk, 563 So. 2d 646 (Fla. 3d DCA) (table), review dismissed, 569 So. 2d 1281 (Fla. 1990).

Subsequently, still unhappy with the results of the Insurance Action, Stembridge filed a form with the Florida Bar entitled "Inquiry/Complaint Form" ("Bar Inquiry"). [1] In the Bar Inquiry Stembridge set forth the facts of the Insurance Action and the nature of certain proceedings in that case. He asked whether certain arguments made by Mintz in the Insurance Ac-

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1 Stembridge has consistently taken the position that he filed an inquiry, not a complaint. The Bar's response indicates that the Bar treated it as a complaint.

tion "gave rise to any problems as they relate to the rules regulating the Florida Bar . . . ." The Florida Bar responded.

> "Having reviewed the entire grievance file, please be advised that your complaint does not evidence that the accused attorney has acted unethically or in violation of the Rules Regulating The Florida Bar. Accordingly, I have close your file in this matter."

Mintz then sued Stembridge for defamation based on the Bar Inquiry form. Mintz did not make any claim of defamation with respect to the Bar Inquiry form which Stembridge sent to the Florida Bar. However, on the Bar Inquiry form Stembridge showed that he sent copies to several third parties, namely

(1) Stembridge's former attorneys who represented him in the Insurance Action;

(2) Mintz law partner who, along with Mintz, represented the insurance company in the Insurance Action, and

(3) several governmental agencies. [2] Mintz alleged that he was defamed by the copies which were sent to the other attorneys and the governmental agencies.[3]

Mintz moved for summary judgment as to liability based on Stembridge's failure to respond to requests for admission, arguing that the matters set forth therein — including that the Bar Inquiry form had been filed and that it was not privileged — had been admitted. Stembridge acted as his own counsel in this matter below. In substance he argued that the Bar Inquiry form was not libelous, that it set forth his own opinion, and that his statements were privileged. The trial court granted Mintz's motion, expressly stating that it was doing so based on Stembridge's failure to respond to the requests for admission. Stembridge has appealed and we reverse.

Procedurally, we believe that the rule in Sher v. Liberty Mutual Insurance Co., 557 So 2d 638 (Fla. 3d DCA 1990) indicates that entry of summary judgment based solely on Stembridge's failure to respond to requests for admission was inappropriate. As set forth in Sher, "[t]rial courts are required to look beyond the pleadings to determine the propriety of entering

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2 The governmental offices were the Office of the Governor, the Insurance Commissioner, the Attorneys General of the State of Florida and the United States, and the FBI.

3 Stembridge also sent a copy to Mintz himself. Mintz makes no complaint about the copy he received personally. Defamation requires publication "to one other than the person defamed." American Ideal Management, Inc. v. Dale Village, Inc., 567 So. 2d 497, 498 (Fla. 4th DCA 1990) (citation omitted).

summary judgment. Here, the record is replete with evidence contradicting the admissions created by (defendant's) failure to file a timely response." 557 So. 2d at 639 (citation omitted). Given Stembridge's sworn answers to interrogatories and sworn answer to the complaint, there remained disputed issues of material fact which precluded entry of summary judgment.[4]

On the merits we agree with Stembridge's argument that the content of the Bar Inquiry form was a nonactionable statement of opinion.

Section 566 of the Restatement (Second) of Torts provides:

> A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

In Eastern Air Lines, Inc. v. Gellert, 438 So. 2d 923 (Fla. 3d DCA 1983), this court followed section 566 and summarized the applicable principles:

> (S)tatements of pure opinion cannot constitute actionable defamation. However, a statement that although ostensibly in the form of an opinion implies the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts[5] 566 (1977), is actionable. The difference between the former, unactionable, pure opinion and the latter, sometimes called "mixed opinion," is that:
>
> > "Pure opinion occurs when the defendant makes a comment or opinion based on facts which are set forth in the article or which are otherwise known or available to the reader or listener as a member of the public. Mixed expression of opinion occurs when an opinion or comment is made which is based upon facts regarding the plaintiff or his conduct that have not been stated in the article or assumed to exist by the parties to the communication."
>
> From V. Tallahassee Democrat, Inc., 400 So. 2d 52, 57 (Fla. 1st DCA 1981) [, review denied, 412 So. 2d 465 (Fla. 1982)].
>
> It is the court's function to determine from the context "whether an expression of opinion is capable of bearing a defamatory meaning because it may reasonably be understood to imply the assertion of

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4 It appears that the failure to file a response to the request for admissions was a result of misunderstanding by the pro se litigant. The trial court entered an order requiring Stembridge to file an answer to the complaint and request for admissions within ten days. Within five days, Stembridge filed a sworn answer and sworn answers to interrogatories. Stembridge recited that his filing was made in response to the court's order.

5 We follow section 566 of the Restatement as a matter of state law.

Journal Co., 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) (analyzing First Amendment principles); Florida Medical Center, Inc. v. New York Post Co., 568 So. 2d 454 (Fla. 4th DCA 1990), review denied, 581 So. 2d 1309 (Fla. 1991).

In this case Stembridge's Bar Inquiry set forth the background facts about the Insurance Action. Stembridge stated that in the Insurance Action his counsel had filed several tort counts against his insurance company. Stembridge then summarized certain arguments made by Mintz at a hearing in 1985 in support of the insurance company's successful motion to dismiss the tort counts. Mintz nowhere disputes that he made the arguments attributed to him.

Stembridge went on in the Bar Inquiry for five typewritten pages to summarize, and quote from, various judicial decisions having to do with the duty of an insurance company to its insured. Based on those reported decisions on Florida law, Stembridge asserted that Mintz misquoted Florida law at the hearing. We inquired in substance whether the described "circumstances give rise to any problems as they relate to the rules regulating the Florida Bar, its Code, or Canons of Professional Ethics."

When the Bar Inquiry form is read in its full context, it is clear that Stembridge has expressed a pure opinion, the basis for which is fully disclose din the Bar Inquiry form. In our view the Bar Inquiry form, when read as a whole, cannot be reasonably interpreted to imply" the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts § 566.

As stated in Zambrano v. Devanesan, "The determination whether a statement is fact or opinion is a question of law for resolution by the court. Moreover, and appellate court may make the determination of opinion versus fact on review." 484 So./ 2d at 606 (citation omitted; emphasis added). We conclude that the Bar Inquiry form was nonactionable pure opinion. That being so, the partial summary judgment in favor of plaintiff Mintz is reversed. On remand, the trial court shall enter judgment in favor of defendant Stembridge on the defamation complaint.

One other point bears comment. In the factual statement we have noted the trial court ruling that there was no qualified privilege for the copies of the Bar Inquiry form which Stembridge sent to the attorneys who participated in the Insurance Action.[6] By his second point on appeal Stembridge contends that the trial court erred by overruling the claim of qualified privilege. Since Stembridge is entitled to entry of judgment on other grounds,

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6 The trial court found that there was a qualified privilege for the copies which Stembridge sent to governmental agencies. Mintz has not challenged that ruling here.

we need not reach the privilege issue. Although we leave open the question of qualified privilege, we note that Stembridge's position on this issue is a substantial one.[7]

For the reasons previously stated, the order under review is reversed and the cause remanded with directions to enter judgment in favor of Stembridge on the defamation complaint.

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7 The Florida law of qualified privilege is set forth in Nodar v. Galbreath, 462 So. 2d 803 (Fla. 1984). See also Leonard v. Wilson, 150 Fla. 503, 509, 8 9o 2d 12, 14 (1942); Boehm v. American Bankers Ins. Group, Inc., 557 So. 2d 91 (Fla. 3D DCA), review denied, 564 So. 2d 1085 (Fla. 1990).

Where a Bar complaint arises out of a lawsuit, we are inclined to think that there is a qualified privilege to give copies of the Bar complaint form to those who participated kin the underlying lawsuit. Even if that were not so, assuredly a former client has at least a qualified privilege to communicate with his former lawyers about a matter relating to the prior representation. Most of the individuals who received copies were Stembridge's former lawyers.

The last copy was sent to Mintz's partnet. Nodar holds that there is a qualified privilege to complain to an employer about the performance of an employee. 462 So. 2d at 809. Certainly a person who files a Bar complaint about a lawyer has a qualified privilege to inform the lawyer's law firm. The law firm has an important interest in knowing of the filing of a Bar complain about one of its attorneys, and there is a public interest in the free flow of such information to the law firm so that corrective action can be taken in those cases where the complaint is well founded.

MOTION FOR SIGNED ORDER FOR

FINAL
DEFAULT JUDGMENT

Comes now the Plaintiff John M. Stembridge who motions and orders this court for a signed order of final Default Judgment against PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., Judge Mario Goderich, Mark Mintz, Keith Truppman, Byrd Duke, Marie Duke, Robert Korner, Jean Korner, Sam Holland, Howard Neu for their illegal and unlawful bad faith actions committed under tort and stature and constitutional laws since May 1977. All part of an elaborate Rico Criminal Scheme to defraud the Plaintiff of his property, livelihood, well being and constitutional benefits and rights for 16 years.

For reasons that PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. and the defendants are in Default for not answering the Plaintiff's June 1, 1992, summons and complaint or any of the Plaintiff's subsequent complaints and charges which have never been denied by the defendants for fear of perjury since May 1977. It is now 1993.

The Plaintiff motions and orders that Judge Marguerita Esquiroz be prohibited from allowing the defendants to defend their defense due to their default and continued unchecked illegal activities against the plaintiff John M. Stembridge since May 1977.

EXHIBITS A-L

A- Judge Harvey Goldstein's hand written order June 5, 1991, reversing his order December 19, 1990, which defrauded the Plaintiff out of several thousand dollars interest.

B- Judge Harvey Goldstein's order December 27,1990, which defrauded the Plaintiff of several thousand dollars of interest.

C- Howard Neu's December 27, 1990, motion for re-hearing claiming ignorance of Mintz's motion for court ruling on interest issue. This motion was filed after Plaintiff charged Neu with collusion with Mintz and Holland. No challenge by Judge Goldstein, Mark Mintz, or Sam Holland of this false assertion by Neu. All quietly, go along with Neu in an effort to cover their illegal actions of December 14,1990, and Judge Goldstein illegal December 19,1990 order.

D- Mintz's November 28, 1990, notice to Howard Neu of motion for court ruling on interest issue. Proof of Holland's and Neu's knowledge of Mintz's motion for court ruling on interest issue.

E- Plaintiff's January 11,1991, letter to Neu expressing concern of Neu's betrayal of the Plaintiff. Judge Goldstein, Mintz and Holland allowed the hearing to go forth unchallenged.

F- Mintz's February 27, 1987, offer to Plaintiff to settle "any bad faith of derivative claims" which Truppman, his partner along with Korner tried to threaten, coerce the plaintiff at the court house March 12, 1987, into signing, Thereby, getting PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. off the hook for its "bad faith claims and their derivatives".

G- Korner's March 7, 1987, admission of liability to the Plaintiff for mal practice. More importantly, it shows Korner's involvement with Mintz to get PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. off the hook for its "bad faith or derivative claims".

H- Korner's March 13, 1987, letter to Plaintiff attempting to threaten and frighten the Plaintiff to sign Truppman and Mintz settlement offer and thereby release PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. from its liabilities to the Plaintiff for its bad faith actions and their derivatives.

I- Plaintiff's April 9, 1987, authorization of Sam Holland of Kimbell and Hamann to represent him in his claim for bad faith damages against PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. It promised a full accounting to the Plaintiff which Holland, as well as Neu and Mintz have refused to supply to Charles Keye of the "Keye and Caraway Accounting Firm" of how they arrived at the interest amount, so that he could confirm the accuracy for the plaintiff.

J- Plaintiff's September 28, 1987, letter to Holland detailing Korner and Truppman's collusion to get

PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. off the hook for its bad faith actions against the Plaintiff. It clearly shows Holland without excuse in his failure to apply the facts of this case to the law in his client's claim against PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC. Holland is without excuse for his illegal actions.

K- Plaintiff's September 19,1988, letter to Holland expressing his exasperation for Holland's failure to represent properly his claims against PREFFERRED RISK INSURANCE CO., OF IOWA, INC.

L- October 6,1988, letter from Holland to Mintz regarding "our agreement."

I certify that a true and correct copy has been mailed this 7th day of April 1993.

FEDERAL RULES OF CIVIL PROCEDURE
VII. JUDGMENT
USCS Fed Rules Civ Proc R 60 (1998)

Rule 60. Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C.,§ 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

HISTORY:

(Amended March 19, 1948; Oct. 20,1949; Aug. 1,1987.)

STATUTES INVOLVED IN THIS CASE

9 U.S.C. §10,

provides:

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration –

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

TITLE XXXVII INSURANCE
CHAPTER 626 INSURANCE FIELD REPRESENTATIVES AND OPERATIONS
PART X UNFAIR INSURANCE TRADE PRACTICES
Fla. Stat. § 626.9541 (1998)

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS. —The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) *Misrepresentations and false advertising of insurance policies* —Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which: . .

(b) *False information and advertising generally.*— Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

1. In a newspaper, magazine, or other publication,

2. In the form of a notice, circular, pamphlet, letter, or poster,

3. Over any radio or television station, or

4. In any other way,

an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading. . .

(c) *Defamation.*— Knowingly making, publishing, disseminating, or circulation, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, nor any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated injure such person. . .

(c) *False statements and entries.* —

1. Knowingly:

a. Filing with any supervisory or other public official.

b. Making, publishing, disseminating, circulating,

c. Delivering to any person,

d. Placing before the public,

e. Causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement.

TITLE XXXVII INSURANCE
CHAPTER 626 INSURANCE FIELD REPRESENTATIVES AND OPERATIONS
PART XI VIATICAL SETTLEMENTS

Fla. Stat, § 626.9914 (1998)

626.9914 Suspension, revocation, or nonrenewal of viatical settlement provider license; grounds; administrative fine.

(1) The department shall suspend, revoke, or refuse to renew the license of any viatical settlement provider if the department finds that the licensee:

(a) Has made a misrepresentation in the application for the license;

(b) Has engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or incompetent to act as a viatical settlement provider;

(c) Demonstrates a pattern of unreasonable payments to viators;

(d) Have been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(e) Has issued viatical settlement contracts that have not been approved pursuant to this act;

(f) Has failed to honor contractual obligations related to the business of viatical settlement contracts;

(g) Deals in **bad faith** with viators;

(h) Has violated any provision of the insurance code or of this act;

(i) Employs any person who materially influences the licensee's conduct and who fails to meet the requirements of this act; or

(j) No longer meets the requirements for initial licensure.

(4) If a viatical settlement provider establishes a related provider trust as permitted by this act, the viatical settlement provider shall be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the related provider trust, and for the compliance of the related provider trust with all provisions of this act. Any violation of this act by the related provider trust shall be deemed a violation of this act by the viatical settlement provider as well as the related provider trust. If the related provider trust violates any provisions of this act, the department may exercise all remedies set forth in this act for such violations against the viatical settlement provider, as well as the related provider trust.

Fla.Stat. § 624.155(1998)

624.155 Civil remedy.

(1) Any person may bring a civil action against an insurer when such person is damaged:

(a) By a violation of any of the following provisions by the insurer:

1. Section 626.9541(1)(i),(o), or (x);

2. Section 626.9551;

3. Section 626.9705;

4. Section 626.9706;

5. Section 626.9707;

6. Section 627.7283.

(b) By the commission of any of the following acts by the insurer:

1.Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

2. Making claims payments to insurers or beneficiaries not accompanied by a statement setting forth the coverage under which payments and being made; or

3. Except as to liability coverages,failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(7) The civil remedy specified in this section does not preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state. Any person may obtain a judgment under either the common-law remedy of **bad faith** or this statutory remedy, but shall not be entitled to a judgment under both remedies. This section shall not be construed to create a common-law cause of action. The damages recoverable pursuant to this section shall include those damages which are a reasonably foreseeable result of a specified violation of this section by the insurer and may include an award or judgment in an amount that exceeds the policy limits.

Fla. Stat. § 624.489 (1998)

624.489 Liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.

3. Recklessness or an act or omission which was committed in **bad faith** or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term "recklessness" means the acting, or omission to act, in conscious disregard of the a risk:

(a) Known, or so obvious that it should have been known, to the trustee; and

(b) Known to the trustee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

TITLE XXXVII INSURANCE
CHAPTER 624 INSURANCE CODE: ADMINISTRATION AND GENERAL PROVISIONS
PART III AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Fla. Stat: § 624.404 (1998)

624.404 General eligibility of insurers for certificate of authority.

(3) (a) The department shall not grant or continue authority to transact insurance in this state as to any insurer the management, officers, or directors of which are found by it to be incompetent or untrustworthy; or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or so lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or which it has good reason to believe are affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance of business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

(6) Nothing in this code shall be deemed to prohibit the granting and continuance of a certificate of authority to a domestic title insurer organized as a business trust, if the declaration of trust of such insurer was filed in the office of the Secretary of State prior to January 1, 1959 and if the insurer otherwise meets the applicable requirements of this code. Such an insurer may hereinafter in this code be referred to as a "business trust insurer."

CODE OF JUDICIAL CONDUCT

Adopted Effective September 30, 1973 (281 So2d 21)

Including Amendments Received Through February 15, 1989

CANON 1

A Judge Should Uphold The Integrity And Independence Of The Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of the Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a position to influence him. He should not testify voluntarily as a character witness.

Amended Aug. 3, 1976 (336 So2d 584).

CANON 3

A Judge Should perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

OATH OF ADMISSION

Adopted by the Supreme Court January 27, 1941 (145 Fla. 797, 798)

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, which they are sworn on admission to obey and for the willful violation of which disbarment may be had.

"I DO SOLEMNLY SWEAR;

"I will support the constitution of the United States and the Constitution of the State of Florida.

"I will maintain the respect due to Court of Justice and judicial officers;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness, lunless required by the justice of the cause with which I am charge;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So Help Me God."

Rule 4-3.3 Candor toward the tribunal

a) **A lawyer shall not knowingly:**

(1) **Make a false statement of material fact or law to a tribunal.**

(2) **Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.**

(3) **Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or**

(4) **Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.**

b) **The duties stated in paragraph (a) continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information protected by rule 4-1.6.**

4-4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

RULE 4-4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

RULE 1.540 RELIEF FROM JUDGMENT, DECREES OR ORDERS

(b) Mistakes: Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

RULE 1.190 AMENDED AND SUPPLEMENTAL PLEADINGS

(e) Amendments Generally. At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleadings. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

Amended Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165); Oct. 6 and Dec. 30, 1988, effective Jan. 1, 1989 (536 So.2d 974).

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION
DIVISION

JOHN STEMBRIDGE, Pro se,
Plaintiff,

CASE NO. 92-13319 (CA 25)

-vs-

ROBERT KORNER, MARK J. MINTZ,
HOWARD NEU, BYRD DUKE,
SAM HOLLAND, JUDGE MARIO
GODERICH and PREFERRED RISK
MUTUAL INSURANCE CO. OF IOWA,
Defendants.

ORDER ON DEFENDANT, PREFERRED RISK"S
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT

THIS MATTER came before the Court on Defendant, PREFERRED RISK'S, Motion to Dismiss with Prejudice, and the Court having examined the pleadings, heard argument of counsel for Defendant, and JOHN STEMBRIDGE pro se, and being otherwise advised in the premises, it is hereupon

ORDERED and ADJUDGED

1. Defendant, PREFERRED RISK'S, Motion to Dismiss Verified Amended Complaint is granted and the matter is dismissed with Prejudice.

2. The Court reserves jurisdiction to award attorney's fees and costs against the Plaintiff, JOHN M. STEMBRIDGE.

DONE and ORDERED in Miami, Dade County, Florida, this 6th day of January, 1995

ALAN L. POSTMAN
Circuit Court Judge

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

Case No.: 92-13319 CA 20

John M Stembridge
Pro Se
vs.
Preferred Risk Mutual
Ins. Co. Of Iowa

ORDER

Motion for Final Default Order

THIS CAUSE having come on to be heard on Defendant's/Plaintiff's Motion for Final Default Judgment

And the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon.

ORDERED AND ADJUDGED that said Motion be, and the same is hereby Denied, the courts lacks jurisdiction as this matter is currently pending on Appeal

DONE AND ORDERED in Chambers, at Dade County, Florida, this 26 day of April 1995.

"s/___" A L Postman
Circuit Judge

Copies furnished:
All counsel of record by mail
John Stembridge by hand delivery

IN THE CIRCUIT COURT
OF THE 11th JUDICIAL
CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION
DIVISION
CASE NO. 80-7272 (CA 20)

JOHN M. STEMBRIDGE,
Plaintiff,
v.
PREFERRED RISK MUTUAL INSURANCE COMPANY,
Defendant.

ORDER DISMISSING PUNITIVE DAMAGE CLAIMS

THIS CAUSE came on for hearing on June 9, 1983, upon the Defendant's Motion to Dismiss the Plaintiff's claim for punitive damages and this Court having heard argument of counsel and being otherwise fully advised in the premises it is thereupon

ORDERED AND ADJUDGED as follows:

1. That the Motion to Dismiss the Plaintiff's Claim for Punitive Damages, filed by the Defendant, PREFERRED RISK MUTUAL INSURANCE COMPANY, be and the same is hereby granted and the Plaintiffs Claims for Punitive Damages are dismissed.

2. The Plaintiff shall have 20 days from the date of this Order to file an Amended Complaint.

DONE AND ORDERED in chambers at Miami, Dade County, Florida this 7 day of July, 1983.

(stamped)
Mario P. Goderich
CIRCUIT JUDGE

Copies provided to:
Counsel of Record

(letterhead)

CONGRESS OF THE UNITED STATES
House of Representatives
Washington, DC 20515-0919

Dante Fascell
19 District Florida

Charles R.O'Regan
Administrative Assistant

FOREIGN AFFAIRS COMMITTEE
Chairman

Arms Control International Security and Sciences Subcommittee Chairman

Select Committee on Narcotics Abuse and Control Member

Commission on Security and Cooperation in Europe
Member

North Atlantic Assembly
Chairman
House Delegation

Canada-United States
Interparliamentary Group
Member U.S. Delegation

April 2, 1992

The Honorable Janet C. Mullins
Assistant Secretary
Bureau for Legislative Affairs
Department of State
Washington, DC 20520

Dear Secretary Mullins:

I would greatly appreciate your sending the following message or its equivalent to our missions in the following cities: Seoul, Taipei, Singapore, Hong King, Tokyo and Beijing.

"For Chief of Missions from Dante B. Fascell, Chairman, House Foreign Affairs Committee

My constituent and former Mayor of North Miami, Mr. John Stembridge will be visiting East Asia during the period April 7-20 for meetings with host government officials, local industry and religious leaders. Mr. Stembridge will be exploring the role Asia can play fostering peace in the Middle East and in assisting the resettlement of Soviet Jewry in Israel. I would appreciate whatever assistance your staff might be able to provide. I have suggested that Mr. Stembridge contact your office when he is in your city on the following dates:

Seoul:	April 7-10
Taipei:	April 10-12
Singapore:	April 12-16
Hong Kong:	April 16-19

Tokyo: April 19-20
Beijing: (Possible visit around April 17-18)

Thank you for your assistance.

Dante B. Fascell

Thank you for your consideration.

Sincerely,

"s/____

Dante B. Fascell
Member of Congress

Dante B. Fascell
Chairman, Foreign Affairs Committee
Congress of the United States

4-26-92

Fax # (202) 225-0724

From: John M. Stembridge

Fax # (305) 893-0801

Dear Congressman Fascell:

Shalom and greetings! First I want to thank you, your assistant Dean Curran, and Miss Janet Mullins of the State Department, The Political Affairs Counselor in our Embassies for arranging my meetings with Government and Industry leaders in Korea, Taiwan, Singapore, Hong Kong, and Japan this month.

You will be interested to know, I was able to encourage all of the above countries and their industries to join the peace process in the Middle East. To help forge additional peace, agricultural, vocational, and technological agreements between Israel and each of her neighbors. Reminding them that their own peace and prosperity is dependent upon peace in the Middle East. One radical move on the part of either side can shut off the oil not only to Asia but to all the industrialized nations in the world.

Their factories can be shut down over night, their stock markets collapsed, their people put out of work, their standard of living devastated. Because many American businesses are being forced out of business and many American workers are being put out of work, America may not be able to do all that she has in the past. Therefore, these nations need to take up the economic slack as peace brokers in the world today.

Also, because millions of Jewish people will be returning to Israel from Russia and the four corners of the earth, I encouraged their industries to invest in housing and jobs for the olim (immigrants) as they return to the land. Peace, justice, prosperity in the world from now on is directly related to Israel's peace and security.

To this date, the Charter of the PLO calls for the annihilation of Israel. It has never been changed. If Israel is ever threatened, she will not hesitate to drop as many bombs or missiles needed to repel her aggressors. Therefore, the world cannot be indifferent, uninvolved, nor uncommitted to her regathering, to her peace and to her prosperity.

God did not choose Israel because she was the largest - but because she was the least of all nations. That is why America, Europe, Asia, Africa, and the world must be involved in helping and assisting Israel's regathering and peace. In fact God says that He will judge all nations on how they treat or mistreat Israel.

The Foreign Ministry representatives of Korea, Singapore, and Japan all admitted that because they did so much trade with the Arabic nations their policies were imbalanced toward them. Now they realize that they must deal more fairly and equitably with Israel. Thankfully, Japan has joined the multi-lateral nations in the peace process. In fact they're looking forward to hosting the conference on the Middle East Environment in Tokyo in May.

Mr. Nahum Eshkol, Israel's Ambassador in Japan along with his assistant Mr. Mordehai Amihai, as well as Mr. Samy Ofri and Miss Trit Lilian - Cohen of the Singapore Israeli Embassy expressed appreciation for all these efforts to involve the Pacific Rim nations in the peace process in the Middle East and for encouraging their industries to invest in housing an jobs for all the new immigrants in Israel.

There's a possibility that I will be going back to the Vatican for another meeting with His Holiness, Pope John Paul and Cardinals Odi and Bonnecelli to thank them for their assistance in helping the Refusenik Jews of Russia be able to return to Israel as prophesied. Also, to ask for the Vatican's help in enlisting the assistance of nations and industries in building up Zion with jobs and housing for those returning to the land. Hopefully, this will be the first or second week in May.

If possible, it would be good if you could notify our Embassy in Rome for any assistance which they may provide with the Vatican and Italian Government.

Again, I want to thank you, Congressman Fascell, for your friendship and assistance on many of my projects over the years and for the able leadership which you are providing our nation and the world at such a critical time in its history.

With much Ohav Shalom
(Love & Peace)

's/_____
John M. Stembridge

(letterhead)

CONSULATE GENERAL OF ISRAEL ,MIAMI, FLORIDA

Mr. John Stembridge
STEMBRIDGE FURNITURE
545 N.E. 125th Street
North Miami, Florida 33161

Dear John:

Shalom and greetings to you as well. I deeply appreciate the copy of your fax to Dave Lawrence, and read it with great interest. Your eloquence in writing about the Regathering of Holocaust Survivors literally moved me to tears. I share with you and all those throughout the world who have vowed never to forget man's inhumanity to man, the hope and prayers that the goals of peace and harmony will indeed reign before long.

With all good wishes,

Sincerely

"s_____

Ruhama Hermon
Consulate General of Israel
100 N. BISCAYNE BLVD. SUITE 1800,
MIAMI, FL 33132
TEL: (305)358-8111
FAX: (305)371-6034

(Seal of U.S.)

Singapore, April 13, 1992

Fax to: 732-2917

Fax Fm: 338-4580 (one page only)

To Mr. John Stembridge
c/o Singapore Hilton
Kenneth Jarret, U.S. Embassy

Here is a schedule for tomorrow's meeting. Unfortunately, the appropriate officials at the Economic Development Board were not free. Charles Simon of the Jewish Businessman's Association was also tied up. However, we did arrange a call at the Ministry of foreign Affairs (MFA). The MFA office is near the Embassy, so if you could come to the Embassy at 3:15 P.M., we could connect then and go over to MFA together. We could then return to the Embassy for the meeting with Mr. Kobler. Should you have questions, just call me tonight at home: 235-4252

Schedule

0930 Meet with Ms. Janice Kwok, Manager, Business Services Development, Singapore Manufacturers Association (SMA)
Place: SMA House, 20 Orchard R Rd., 3rd floor, Phone: 338-8787

1100 Meet with Ms. Irit Lillian-Cohen, Charge d'Affaires and Mr. Samy Ofre, Counselor for Economic Affairs, Embassy of Israel.
Place: Israeli Embassy, 58 Dalvey Road. Phone: 235-0966

1350 Meet with Ms. Viji Menon, Acting Director, International Organizations and Third World, MFA. Place: MFA, Raffles City Tower, 9th Floor

1630 Meet with Mr. Arthur Kobler, Charge d'Affaire, U.S. Embassy
Place: U.S. Embassy, 30 Hill Street
Phone: 338-0521

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 92-13319 CA 20

JOHN STEMBRIDGE,
Plaintiff,
vs.
PREFERRED RISK MUTUAL INSURANCE COMPANY OF IOWA, et al.,

Defendants

ORDER OF DISMISSAL

THIS CAUSE having had Motion to Dismiss GRANTED, and the Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that the above styled case is hereby DISMISSED. The Court hereby reserves jurisdiction to enforce the terms of the settlement.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this __5__ day of __May__, 1998

(stamped) JUDGE ALAN L. POSTMAN

ALAN L. POSTMAN
Circuit Court Judge

Copies furnished to:
JOHN STEMBRIDGE
L. DANIEL FERRER, ESQ.

PERSONAL NOTES

At the outset of this Writ, the Petitioner would have liked to honor his father by categorically stating that contrary to the Respondent's assertions, the Petitioner does not desire one cent, much less one dollar, from this case that is not justly his. James George Stembridge, father of the Petitioner taught many of Solomon's laws to the Petitioner. One of them is: **"A good name is better to be chosen rather than great riches; loving favor rather than silver and gold" (Proverbs 22:1).**

It was the Petitioner's honor and privilege to be in Constitution Hall in Philadelphia in September 1987 for the Bicentennial Celebration of our Constitution; to be in the hall where this precious document was hammered out by its framers; to see the exhibit "Miracle at Philadelphia" which is a direct quote from President George Washington after he witnessed the signing of the Constitution by the framers.

To relive once again the reason why Madison is called the Father of the Constitution. It was because of his overwhelming compulsion and belief that if the original thirteen colonies did not have a unifying document such as the Constitution, that they would forever be at each other's throats with feudal wars against one another.

George Washington was such a pessimist that these thirteen colonies could ever agree on such a document, that he refused to attend: much less be a delegate. Madison persuaded Jefferson to accompany him to visit George Washington in an effort that perhaps the two of them could persuade him to change his mind. They were successful, Washington finally agreed to come as an observer, thereby lending his statue and presence to the proceedings. Thus the name of the exhibit "Miracle at Philadelphia" is from the joyful proclamation of our founding President.

It is in that spirit that manifested itself in Constitution Hall amongst the delegates that overcame their self interest and finally unified them , thus causing them to be forever historically remembered as the framers and signatories to the top unifying document of law in this land and in the earth (outside of God's law given at Sinai) that the Petitioner humbly submits his Writ to this Court.

Mr Di Battisto, who works for the Pope, is a friend of the Petiioner. He has his own Vatican passport and has handled important business transactions for the Vatican all over the world.

He is the gentleman who took the Petitioner first class to Rome in February 1985 for an audience with Pope John Paul II. The ten minute audience took place at 12:30 P.M. February 19, 1985.

Just before the Petitioner's audience, the Pope met with Shimon Perez, Prime Minister of Israel. The two of them apoke on the status of Jerusalem. Perez's position was that Jerusalem should always be the eternal capital of Israel. The Pope's position was that Jerusalem should always be a free city where all Jews, Muslims and Christians may worship peacefully.

The Petitioner's time with his holiness was spent lobbying him to please use his worldwide influence to encourage world leaders to come together in order to build world opinion and pressure on the Kremlin until the 3 million Jewish Refuseniks in Russia were free to make aliyah (immigrtion) to Israel.

Carl Bernstein's book on Pope John Paul II and the Feb. 1992 edition of Time Magazine how the Pope and President Reagan conspired together with the Solidarity Union of Poland that brought down Communism in the Kremlin and Eastern Europe.

Today more than 1 million of those former Russian Jewish Refuseniks are living freely in Eterz Israel. Thank God.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO.: 80-7272 CA 20

JOHN M. STEMBRIDGE,
Plaintiff,
v.

PREFERRED RISK MUTUAL INSURANCE CO.
Defendant.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

THIS CAUSE came on for hearing on May 3, 1984 upon the Defendant's Motion to Dismiss the Plaintiff's Second Amended Complaint and this Court having heard argument of counsel and being other wise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED as follows:

1. The Defendant's Motion to Dismiss the Plaintiff's Second Amended Complaint herein be and the same is hereby granted and the Second Amended Complaint is hereby dismissed.

2. The Plaintiff shall have twenty (20) days from the date of this Order in which to file a Third Amended Complaint.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of Aug., 1984.

(Stamped)
MARIO P. GODERICH
CIRCUIT JUDGE

Copies provided to:
Mark J. Mintz, Esq.
Robert D. Korner, Esq.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

JOHN M. STEMBRIDGE,

PLAINTIFFS(S),

VS.

PREFERRED RISK MUTUAL INSURANCE CO. OF IOWA, INC., et al.,

Defendant(s)

_____/

GENERAL JURISDICTION DIVISION

CASE NO.: 92-13319 CA 20

ORDER SETTING CAUSE FOR JURY TRIAL, PRE-TRIAL CONFERENCE AND PRE-TRIAL INSTRUCTION.

THIS CAUSE is set for Jury Trial before the undersigned Judge in the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, for the **THREE (3)** week period commencing **MARCH 19, 1996,** or as soon thereafter as the same may be heard.

ALL ATTORNEYS, pursuant to Fla.R.Civ.P.1.200, shall appear before the undersigned Judge, at the Dade County Courthouse, for a **Call of the Calendar at 12:00 P.M. (NOON)** on **MARCH 19,1996.** All attorneys should be thoroughly familiar with the cause and be prepared to consider and determine such matters as are set forth in Rule 1.200(b). **Failure to appear** as directed or to strictly comply with the terms of this Order may result in sanctions including, dismissing the action, striking the pleadings, limiting proof or witnesses. It is further,

ORDERED AND ADJUDGED as follows:

1. The parties shall do all things reasonable and necessary to assure the availability of their witnesses for the **entire** trial period or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. See Fla.R.Civ.P.1.300 and 1.460; and Fla.R.Jud. Admin. 2.085.

2. The following shall be done no later than **FEBRUARY 6, 1996.**

(A) Parties shall furnish opposing counsel with a written list containing the names, addresses and business telephone number of all witnesses (impeachment, rebuttal or otherwise) intended to be called at trial and only those witnesses listed shall be permitted to testify. The parties shall state the substance of the facts to which the witness is expected to testify.

Re: Expert witnesses: The parties shall comply with Fla.R.Civ.P.1.280 (b) (4) (A). Each party shall identify any person to be called as an expert witness and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Each party is limited to one expert per specialty and the specialty shall be disclosed at this time. Each party shall furnish all information required by Rule 1.280 (b) (4).

A written list identifying all exhibits intended to be offered shall also be furnished to opposing counsel and only those exhibits may be offered in evidence.

(b) All exhibits to be offered in evidence at trial shall be made available to opposing counsel for examination and initialing.

(c) All Plaintiff medical evaluations and other examinations pursuant to Rule 1.360 of the Fla.R.C.P. shall have been completed.

3. The following shall be done at least **fifteen (15)** days prior to the Monday of the trial period set forth above.

(a) All pre-trial motions, depositions noticed for use at trial and discovery matters or proceedings related thereto shall have been completed. **Counsel are admonished to undertake, initiate and complete all discovery in such a manner as to comply with the time limitations set forth herein. No further discovery procedures or depositions for preservation of testimony shall be allowed without specific leave of Court or Court approved written agreement of counsel.**

(b) Counsel shall meet with a view toward exhausting all effort to reach a settlement.

4. Counsel shall immediately notify this Court in the event of settlement and submit a Stipulation for an Order of Dismissal. **Counsel shall also notify the Court of any pending hearings that will be canceled as a result of the settlement.**

5. In the event the trial of this matter is continued, then each time limitation and provision contained above shall apply as to the new trial date.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida on this 19th day of SEPTEMBER, 1995.

"S_____

ALAN L. POSTMAN
CIRCUIT JUDGE

Copies furnished to:

JOHN M. STEMBRIDGE, PREFERRED RISK MUTUAL INS. CO. INC. C/O ROLAND GOMEZ, ROBERT KORNER, SAM HOLLAND, BYRD DUKE, HOWARD NEW, KEITH TRUPPMAN, MARK MINTZ, JUDGE MARIO GODERICH c/o Roy Wood, JUDGE MARGARITA ESQUIROZ, JUDGE PHILLIP BLOOM, JUDGE JOHN GORDON, STATE OF FLORIDA GOVERNOR LAWRON CEILES & ATTORNEY GENERAL ROBERT A. BUTTERWORTH, JUDGE HAROLD SOLOMON, JUDGE THOMAS H. BARKDULL, JR., JUDGE JAMES R. JERGENSON, JUDGE JOSEPH NESBITT, JUDGE MICHAEL SALMAN, JUDGE HARVEY GOLDTEIN, DADE COUNTY c/o ARTHUR TEELE, JR., CHAIRMAN DADE COMM.

"s_____

MARGIE CRUZ

JUDICIAL ASSISTANT